100th Congress
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HOUSE OF REPRESENTATIVES

Rept. 100-40
Part 1

TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 3

April 6, 1987.—Ordered to be printed

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Mr. Rostenkowski, from the Committee on Ways and Means,
submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 3 which on January 6, 1987, was referred jointly to the Committees on Ways and Means, Agriculture, Banking, Finance and Urban Affairs, Education and Labor, Energy and Commerce, and Foreign Affairs]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means to whom was referred the bill (H.R. 3) to enhance the competitiveness of American industry, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments to section 1, title I, title II, and title VIII appear in italic type in the reported bill.

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Background and Purpose

——THE PURPOSE OF H.R. 3

Titles I, II, and VIII of H.R. 3, as amended by the Committee on Ways and Means, represent the most comprehensive restructuring of basic U.S. trade policy since the Trade Act of 1974. The Committee recommendations would affect virtually every aspect of our basic trade laws, from trade negotiating authority to import relief and unfair trade practices to the structure of Executive branch trade functions. In particular, the bill would strengthen U.S. action against a variety of foreign trade barriers and distortions in order to promote greater access to foreign markets.

One important purpose of the Committee bill is to establish a national trade policy. The bill would require, for the first time, that the President take all appropriate actions to achieve a greater balance in U.S. foreign trade and that his trade representative submit to the Congress an annual trade policy agenda. The bill strengthens the consultation process with the Congress to ensure greater coordination of trade policy between the two branches, and it centralizes trade policymaking within the Executive branch under the Office of the United States Trade Representative.

Another important purpose is to promote United States competitiveness through three basic mechanisms: First, a broad grant of Presidential trade negotiating authority, together with a statement of negotiating objectives, in order to initiate a new round of multilateral trade negotiations which will enhance trade rules and expand market access for U.S. products; second, a series of amendments to mandate action against foreign market barriers and to institutionalize the concept of reciprocity in our bilateral relations with other countries; and third, improvement of our own system for providing temporary import relief or worker adjustment assistance in order to ensure that such measures facilitate greater competitiveness on the part of recipients.

Finally, H.R. 3, as amended, makes a number of changes in our trade laws in order to address new types of unfair trade practices and to prevent circumvention of existing unfair trade laws. These changes are essential if our laws relating to foreign dumping or subsidization practices are to provide effective protection against harm to U.S. industry and agriculture.

BACKGROUND—THE GROWING IMPACT OF THE TRADE DEFICIT

H.R. 3, as amended, is a response to the serious decline in United States competitiveness and the rapid growth in our trade deficit. Since 1981, our merchandise trade deficit has quadrupled and we have become the world's largest net debtor. The potential for long-term damage to the U.S. economy if this trend continues is extremely worrisome. Already, there has been serious damage to major sectors of our economy as a result of shrinking markets for American exports and rapid increases in imports. Eventually, this trend is likely to cause a decline in the confidence of investors, both foreign and domestic, which is essential to our domestic economic stability. A severe loss of confidence in the U.S. economy could cause a world-wide economic downturn.

The growth of our trade deficit and increase in foreign debt are troubling economic statistics, but even more troubling is the apparent decline in the international competitiveness of American products. The share of world markets held by U.S. producers has been declining throughout the past decade. This decline is not occurring solely in a few sectors such as steel and textiles, but in high technology trade, agriculture, and even services. This reflects a number of disturbing developments—ranging from domestic policy failures to foreign trade barriers and distortions—but its ramifications for the future are indeed disturbing. If the United States is unsuccessful in restoring its international competitiveness, we will almost certainly experience a dramatic decline in our living standards and a lessening of our influence throughout the globe to promote American free market values.

The Committee recognizes that changes in our trade laws alone cannot possibly bring about a rapid improvement in our trade balance. Clearly, the growth in our trade deficit since 1981 has been largely the result of serious shortcomings in macroeconomic policy. Moreover, the loss of our international competitiveness has been aided by inadequate incentives to save and invest, a poor environment for education and training of our work force, and a national propensity to consume. There can be little hope for reversing our trade deficit unless we undertake broad reforms at both the governmental and private level. In the next several years this country must make enormous strides in reducing our budget deficit, improving basic skills of our work force, promoting new research and development, and enhancing the climate for new investment.

While the Committee is cognizant of the need to address these deficiencies in general economic and social policy, it is nevertheless clear that a number of problems exist in the international trading system and in the broader area of international economic relations generally. Some of these problems fall outside the scope of traditional trade policy—exchange rate fluctuations and the Third World debt are two examples—but must also be addressed if we are to help improve our performance in world trade. In fact, other titles of H.R. 3 seek to deal with many of these broader international economic policy issues. There are, however, several major defects in international trade rules and in U.S. trade policy which can and must be remedied. The growth of barriers and distortions to trade throughout the world, coupled with a weak and badly dispersed system for making trade policy decision within our own government, will make it very difficult for the United States to improve our trade balance once we have addressed the underlying macroeconomic problems. The Committee bill attempts to deal with both of these problems.

One major difference between today's global economy and that which prevailed in the early years of the GATT trading system is that new forms of government practices and policies once unfamiliar to the United States are now commonly accepted. Today, an increasing number of governments believe that the road to economic success leads not through the free market, but through a new form of mercantilism which includes: systematic denial of reciprocal market access; government-led development of new technological and industrial capacity; and encouragement of trade surpluses through subsidization of exports and restriction of imports.

Nations which practice these policies are developing into overnight trading powers. Aided by freely transferable technology and relatively easy access to export markets, these countries have profitted from a world trading system which has permitted them to develop export-led economic systems with little pressure for internal liberalization. As a result, few of these emerging trading nations practice truly reciprocal free trade, and many have engaged in practices which violate both the spirit and the letter of the General Agreement on Tariff and Trade. Moreover, many of these countries are doing very little to expand their internal consumer markets, preferring instead to plow their export earnings back into further manufacturing capacity. As a result of all these factors, there are structural imbalances in the world trading system which threaten its stability and increase pressures in the United States for protectionism.

The American response to these developments has been slow to emerge. Although the government has made more aggressive use of our trade laws in recent years to address some of the foreign practices most harmful to our commercial interests, it can hardly be said that we have a cohesive national strategy to attack flaws in the trading system. Within the Executive branch, there are conflicts among various agencies that go unresolved. No single voice speaks for U.S. trade policy—either to the Congress or to our trading partners. Trade negotiations are conducted on an ad hoc basis in response to pressures which are more political than commercial in nature. Importing interests have developed an entire industry in exploiting deficiencies in U.S. trade laws, their efforts aided by a weakened and poorly managed Customs Service. Import relief laws have often been interpreted too narrowly and our unfair trade laws have not always proved effective to address changes in the forms of various unfair trade practices.

WHY H.R. 3 IS NECESSARY

Whatever the major contributors to today's competitiveness problem, it is obvious to the Committee that the United States has failed to recognize or deal realistically with the effects of global economic change. Manufacturing jobs are being lost; a total decline of over two million since 1981. The depression in our farm economy is staggering; roughly half a million farm foreclosures since 1981. Unemployment in key industrial areas remains unacceptably high, with no real offsetting policies to promote stable adjustment. Our workers and communities are being asked to pay the costs of changes brought upon them by world competition, while the Federal Government does little to promote the necessary adjustment process.

Some might question whether it is really essential to restructure our basic trade policies at a time when general economic conditions seem favorable. It is true that real economic growth during 1985 and 1986 has averaged 2.7 percent, and that interest rates and inflation are down. However, these positive signs belie a clear and present danger confronting this country. Huge budget deficits and the accumulation of a large foreign debt will eventually lead to serious problems and unwelcome choices. The larger that foreign debt becomes, the more difficult will be the task for the United States to repay it through future trade surpluses. A $500 billion debt by 1990 (which the Federal Reserve Bank of New York has indicated is a very likely occurrence) means that the United States will have to maintain a trade *surplus* of about $40 billion simply to pay the *interest* on our foreign debt and avoid a further worsening of our current account deficit.

Yet the weakening of our industrial and agricultural sectors relative to world-wide competition will make it increasingly difficult to obtain such favorable terms of trade and may in fact make it impossible to generate a trade surplus without our resorting to wholesale protectionism. Many of the markets already lost to U.S. firms will be jealously protected by our foreign competitors—protected, if necessary, with the help of government resources. Most of our trading partners are now accustomed to running large and persistent trade surpluses with the United States, and they may invoke extreme measures to protect that advantage even in the face of a weakened dollar. Many will resort to further government subsidies, greater home-market protection, exchange rate manipulation, and other trade distorting practices to defend their national economic interests.

Many industries and interest groups feel we should respond to this problem through greater resort to protectionist measures of our own. They advocate quotas and higher tariffs, or other outright nontariff barriers, as a panacea for the problem. These forms of economic policy are misguided, and have proven in the past to cause grave economic harm, but as our trade problem deepens an ever-increasing number of groups are pressuring the Congress for these types of measures.

There is now a diminished consensus for traditional free trade policies within the American business community and among the general public. This is a direct result of perceived inadequacies in our ability to deal squarely with the new mercantilism or to recognize the implications of living in a world economy. In order to restore confidence, the Congress must reassert the fundamental precepts of policies articulated in trade legislation since the Reciprocal Trade Agreements Act of 1933: fair trade rules based on market principles; reciprocal access enforced through bilateral and multilateral agreements; promotion of U.S. competitiveness; and protection of U.S. industries and workers from rapid changes in their terms of trade.

Rather than abandoning free trade as a basic tenet of U.S. economic policy, the Committee believes it is far better to pursue a fundamental policy of free and fair trade enforced through tough bilateral negotiations and strong United States leadership in the world economy. The Committee bill makes substantial progress toward this goal. Its basic purposes: to address growing areas of government intervention such as foreign industrial targeting; to toughen U.S. responses to foreign trade barriers that violate trade agreements; to promote, through tough negotiations, foreign market access for highly competitive elements of our economy—such as telecommunications and intellectual property—in cases where our trading partners do not maintain the same fundamental fairness and openness as does the United States; to reduce the excesssive bilateral trade surpluses of countries that rely on systematic unfair trade policies; to regulate new forms of injurious dumping and subsidies; to promote adjustment in connection with import relief through the development of business-labor-government adjustment measures; to set forth negotiating objectives and authority which will enable us to fight for a strengthening of international trading rules; and to end the chaos in U.S. trade policymaking by creating a single, central voice for coordinating and administering such policies—the United States Trade Representative.

CONCLUSION

Ultimately, the trade policy of this country should be designed to ensure economic prosperity, to guarantee a stable industrial and agricultural base, to promote a competitive world economy in which American workers and firms have fair opportunities to compete. The Committee believes that Titles I, II, and VIII further those goals in a manner consistent with the principles of free and open trade. This legislation is a recognition of the fact that our Federal Government bears an obligation to protect the rights of its industries and workers in a highly merchantilist world economy. That obligation cannot be discharged by ignoring the difficult decisions. It must be met through assertive but fair actions which will guarantee reciprocal trade around the world.

SUMMARY OF AMENDMENTS TO H.R. 3 AS ORDERED REPORTED BY THE COMMITTEE ON WAYS AND MEANS

The amendments to H.R. 3, as ordered reported by the Committee on Ways and Means, are in the nature of a substitute to the original language of Titles I, II, and VIII. These amendments make a number of modifications to those titles. Title I contains a number of findings and statements regarding the U.S. trade deficit, trade deficit reduction, and a national trade policy and agenda; makes extensive amendments to U.S. trade laws; and includes trade negotiating authority and objectives for a new round of trade negotiations. Title II contains amendments establishing a mechanism to deal in a comprehensive way with foreign trade barriers in the area of telecommunications goods and services. Title VIII includes over seventy miscellaneous trade and tariff items covering duty suspensions; duty-free measures; classification changes and customs related non-tariff matters; and provides for the implementation of the Nairobi Protocol to the Florence Agreement.

TITLE I—TRADE LAW AMENDMENTS

Subtitle A—National Trade Policy and Agenda

Section 101. National Trade Policy

I. Findings

Contains numerous findings regarding the U.S. trade imbalance, its causes and effects on the U.S. and world economy, and the need for deficit reduction, including the following:

A. The U.S. is confronted with a fundamental disequilibrium in its trade and current account balances and a rapid increase in its net external debt.

B. This imbalance is a result of numerous factors, including: disparities between the macroeconomic policies of the major trading nations; the large U.S. budget deficit; instabilities and structural defects in the world trade and monetary system; the growth of debt throughout the developing world; governmental distortions and barriers; and serious inadequacies in U.S. trade policy.

C. A continuation of these deficits, coupled with a further accumulation of external debt, will seriously undermine the U.S. economy. This will hasten the decline in living standards of workers and consumers and will increase unemployment. Over time, these changes in U.S. economic conditions will bring about worldwide economic disruptions and stagnation of world trade, thus jeopardizing the economic security of the free world.

D. It is, therefore, essential that the U.S. pursue a broad array of domestic and international policies to ensure future stability in its external trade and to guarantee the continued vitality of America's technological, industrial and agricultural base.

II. Presidential Action Regarding Trade Deficit Reduction

Sets forth a statement of U.S. policy regarding progressive reduction of the U.S. trade deficit and requires Presidential action in numerous areas to achieve this goal. Requires the President to report annually to Congress and explain progress toward such goals.

A. States that it shall be the policy of the United States to reduce substantially its trade and current account deficits and to seek to achieve, no later than 1992, a more consistent equilibrium in such accounts.

B. States further that it is the policy of the United States to maintain a system of reasonably stable exchange rates through greater cooperation and leadership within the international financial system.

C. The President is directed by the Congress to use all appropriate powers to achieve these objectives, including:

1. Recommending to the Congress appropriate changes in fiscal, regulatory or general economic policy;
2. Greater efforts to coordinate economic and monetary policy with major U.S. trading partners;
3. More effective use of trade policy measures (including those authorized under this Act) to expand markets for U.S. exports, discipline unfair trade policies of other nations and negotiate a more open world trading system; and
4. Better management of Third World debt.

D. The President is required to report to the Congress on an annual basis, in conjunction with his annual trade policy statement, as to his progress in reducing the trade deficit, whether he is achieving the goals of deficit reduction, and if not, why.

Section 102. Annual National Trade Policy Agenda

Requires the USTR to submit an annual statement to the Committees on Ways and Means and Finance setting forth trade policy objectives and priorites; actions and legislation to achieve them; and progress made toward their accomplishment. The USTR must consult with the Committees on objectives and their status.

Section 103. Information and Advice From Private and Public Sectors Relating to Trade Policy and Agreements

Expands the private sector advisory committee functions to include information and advice on development and implementation of overall U.S. trade policy and priorities, as well as negotiation issues; expands the advisory committee structure and advice to the Congress.

Section 104. Congressional Liaison Regarding Trade Policy and Agreement

Expands consultation requirements between the USTR and the Congress:

1. Requires consultation and advice from the existing Congressional advisors on trade policy development and priorities, as well as negotiations; provides for additional special Congressional advisors on specific policy matters or negotiations.

2. Requires the USTR to consult at least four times a year with the Committees on Ways and Means and Finance on the development, administration, and implementation of overall U.S. trade policy matters and specific actions under the trade laws.

Section 105. Trade Competitiveness Impact Statements

Requires an impact statement from the President to the Committtees on Ways and Means and Finance 60 days in advance of issuing a regulation or executive order or proposing legislation that would have a significant impact on competitiveness. This requirement is subject to a national interest or emergency waiver.

Subtitle B—Trade Agreement Negotiating Authority, Enforcement of United States Rights Under Trade Agreements, and Response to Foreign Trade Practices

Chapter 1—Trade Agreement Negotiating Authority

Section 111. Overall and Principal Trade Negotiating Objectives of the United States

Sets Forth U.S. Objectives for Trade Negotiations:

1. Overall objectives—open, equitable, and reciprocal market access; trade barrier reduction; more effective international trading system.

2. Specific objectives—
    a. agriculture
    b. dispute settlement
    c. unfair trade practices
    d. services
    e. intellectual property rights
    f. foreign direct investment
    g. import safeguards
    h. improvement of GATT and MTN agreements
    i. specific barriers
    j. worker rights
    k. access to high technology
    l. LDC graduation
    m. current account surpluses
    n. trade and monetary coordination

3. Types of agreements—objectives are to be achieved through multilateral agreements when feasible, but bilateral or other agreements should be negotiated where more effective or appropriate or if multilateral are not feasible.

Contains a sense-of-Congress provision stressing the need to eliminate unfair practices and foreign barriers affecting U.S. agricultural exports and urging the USTR to take all steps and use all its authority to achieve the elimination of such practices and barriers, including but not limited to specified barriers in the European Community, Japan, Korea, Taiwan, India, Canada, Argentina, and other countries, affecting beef, rice, citrus, feedgrains, fruits and nuts, forest products, and other products.

Section 112. Trade Agreements Regarding Tariff Barriers

Grants the President 6-year authority (until January 3, 1993) for tariff agreements and to proclaim reductions, continuation, or increases of U.S. duties. Duty reductions on a particular article cannot exceed 60 percent if the International Trade Commission or the USTR determines that any greater reduction on the particular article would have a probable significant adverse economic effect on the domestic industry. Any reductions on such items must be phased in over a 10-year period; reductions on any other importsensitive articles must be phased in over a period up to 10 years.

Section 113. Trade Agreements Regarding Other Than Tariff Barriers, and

Section 114. Implementation of Trade Agreements

Extends existing nontariff agreement negotiating authority (section 102), subject to "fast track" Congressional approval of implementing legislation, for 3 years (until January 3, 1991), with an automatic extension for an additional 2 years (until January 3, 1993) if: (1) the USTR consults with and submits a report to the House Committee on Ways and Means and the Senate Committee on Finance describing progress made and the need for continued authority; and (2) neither Committee disapproves within 60 legislative days.

Expands the nontariff agreement authority to specifically authorize its subsequent use for an implementing bill to approve the International Convention on the Harmonized Commodity Description and Coding System and to implement the Harmonized System nomenclature in the U.S. customs tariff.

Extends the existing bilateral trade agreement authority for 5 years until January 3, 1993, except for negotiations underway as of January 1, 1987 (Canada). Requires the USTR to identify, and consult with the Committees on, foreign countries that have the best potential for bilateral free trade area relationships.

Links agreement authority to negotiating objectives. Requires a Presidential determination that an agreement achieves applicable overall and specific negotiating objectives (set forth below) and a statement explaining what objectives it does or does not achieve. The statement must also describe efforts to achieve international exchange rate equilibrium and any effects of the agreement on international monetary stability. Requires consultations with Congress and the private sector, and reports on the achievement of objectives.

Conditional MFN. Requires the President to recommend application of agreement benefits solely to signatory countries assuming obligations, if appropriate and consistent with the agreement and U.S. international obligations.

Section 115. Amendments to the Trade Act of 1974

Broadens the scope of advice and information required for trade negotiating purposes, to include information and advice to the President on the effects of any proposed changes in the entire range of nontariff and other barriers on domestic industries and other U.S. economic interests.

Section 116. Compensation Authority

Adds compensation authority, if required by international obligations, for import restrictions imposed by legislation or tariff reclassification.

Section 117. Tariff Agreements With Canada

Grants the President 5-year authority to enter into and to proclaim tariff agreements with Canada reducing or eliminating duties on a specific list of tariff items.

Section 118. Implementation of United States-EC Agreement on Citrus and Pasta

Provides authority for the president to proclaim modifications of certain U.S. duties in order to implement tariff reductions agreed to by the United States in the bilateral Agreement with the European Community concluded on February 24, 1987, with respect to citrus products.

Section 119. Report on Negotiations To Eliminate Wine Trade Barriers

Requires the USTR to issue an updated report on wine trade barriers within 13 months.

Chapter 2—Enforcement of United States Rights Under Trade Agreements and Response to Foreign Trade Practices

Chapter 2 amends Chapter 1 of Title III of the Trade Act of 1974 (commonly known as "section 301"). Section 301, as amended by the Trade Agreements Act of 1979 and the Trade and Tariff Act of 1984, is the basic statutory authority for the President to enforce U.S rights under trade agreements and to obtain the elimination of foreign government unfair trade practices which burden or restrict U.S. commerce.

Section 121. Action Required in Response to Determinations;

Section 122. Investigatory Procedures;

Section 123. Consultation Upon Initiation of Investigations;

Section 124. Recommendations for Presidential Action by Trade Representative; and

Section 125. Action Decisions by Trade Representative

Sections 121 through 125 make the following changes to Chapter I of Title III of the Trade Act of 1974:

A. Transfer to the USTR, from the President, the authority to make determinations of whether foreign practices meet section 301 criteria. Also transfers to the USTR, subject to the direction of the President, the authorities to determine whether action is appropriate and to implement such action.

B. Makes 301 action mandatory for foreign trade agreement violations. Requires that in cases involving foreign violations of trade agreements or other "unjustifiable" practices, the USTR must retaliate in an amount equivalent in value to the foreign burden or restriction (the form of retaliation would be at his discretion, with preference given to tariff, rather than quota, restrictions); the USTR must report to Congress on each action. No retaliation would be required if:

1. The GATT determines the practice is not a violation of U.S. rights or does not deny trade agreement benefits.

2. The foreign government has agreed to eliminate or phase out the practice or has agreed to a satisfactory imminent solution of the burden or restriction on U.S. commerce.

3. If number 1 or 2 cannot be achieved, the foreign country has agreed to provide full compensatory trade benefits.

4. The USTR determines such action is not in the national economic interest, because economic interests would be more adversely affected if action were taken than if not, and he reports the reasons to the Congress.

With respect to cases involving "unreasonable" or "discriminatory practices," which do not violate U.S. rights, the USTR would retain discretionary authority to retaliate.

Requires the USTR to take into account the likely impact on agricultural exports of imposing section 301 import restrictions.

C. Adds specific authority to remove or deny duty-free treatment under the Generalized System of Preferences (GSP) with respect to a country or any product as a section 301 action.

D. Disciplines Export Targeting. Applies section 301 specifically to cases where export targeting exists and is, or threatens to be, a significant burden or restriction on U.S. commerce. The USTR must make a determination within six months after the investigation is initiated.

USTR action is mandatory if targeting is a significant burden or restriction, unless he finds it is not in the national economic interest because such interests would be more adversely affected if action were taken than if not. If targeting threatens to be a significant burden or restriction, the USTR retains discretionary authority to retaliate.

Actions could include retaliation in an amount equivalent in value to the significant burden, restriction, or agreement by the foreign country to eliminate the burden or restriction or to provide compensatory trade benefits. The President may also take administrative actions or propose legislation to restore or improve the industry's international competitive position. Action must reflect, to the extent possible, the full benefit level of the targeting policy or practice over the period it has an effect.

If the national economic interest waiver is exercised, the USTR must convene a private sector panel of experts, including representatives of the domestic industry and labor, to advise on measures to promote the industry's competitiveness. The panel must report to the USTR within six months; the USTR must forward the report to the Congress with his recommendations.

E. Amends the definition of "unreasonable" acts, policies, or practices actionable under section 301:

1. Includes the denial of certain worker rights. The USTR may determine the act, policy, or practice does not exist if the foreign country has taken, or is taking, steps that demonstrate significant and measurable overall advancement to afford such rights.

2. Takes into account, as appropriate, reciprocal opportunities in the U.S. for foreign nationals and firms in determining whether an act, policy, or practice is "unreasonable."

3. Includes the toleration by a foreign government of systematic anticompetitive activities by private firms, or among private firms, in that country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods to purchasing by such firms.

F. Reduces and imposes time limits for action. Requires USTR determinations on whether an act, policy, or practice is actionable under section 301 in all cases. Requires USTR decision on action, if any, within a maximum of 18 months in all non-subsidy GATT cases (may be extended up to three months if additional time is needed before foreign consultations to prepare the international case), except he may delay implementation for up to six months if substantial progress is being made, or delay is necessary or desirable to achieve U.S. rights or a satisfactory solution, or the petitioner requests delay.

G. Adds investigation procedures relating to the obtaining and use of information from foreign countries; provides for consultations with affected domestic interests (firm, worker, consumer, export) prior to foreign consultations and dispute settlement and prior to recommendations on action, including consultations with industry and labor about action in export targeting cases.

H. Adds modification and termination; monitoring; and compensation authority:

1. Allows modification or termination of section 301 retaliation at any time if the GATT subsequently finds the foreign practice is not illegal, the practice is eliminated, or retaliation is ineffective. USTR must conduct a biennial review of all section 301 actions and may recommend, after consultation with domestic interests, modification or termination.

Adds a requirement that the semiannual report to the Congress on section 301 cases describe the commercial effects of any actions.

2. Requires the USTR to monitor foreign country implementation of, or compliance with, any agreement to grant U.S. rights, to eliminate or phase out its practice, to remove the burden or restriction on U.S. commerce, or to provide compensatory benefits. If the foreign country is not implementing or complying with a settlement agreement, the USTR must determine what action he should take under section 301, subject to the mandatory retaliation provisions and to the time limits and procedural requirements for initial section 301 actions.

3. Allows compensation to adversely affected foreign countries if section 301 retaliation violates GATT.

I. Establishes an Office of Unfair Trade Investigations within the Office of the USTR to prepare the annual report on foreign trade barriers and to coordinate interagency resources on section 301 cases. Adds requirements that the report identify certain foreign practices for possible further action.

Section 126. Mandatory Negotiations and Action Regarding Foreign Countries Having Excessive and Unwarranted Trade Surpluses With the United States

Adds a new section 301(a), Mandatory Negotiations and Actions Regarding Foreign Countries Having Excessive and Unwarranted Trade Surpluses with the United States.

A. Excessive Surplus Determination. The International Trade Commission (ITC) must make an annual determination as to whether any "major U.S. trading partner" (countries with more than $7 billion in trade with the U.S. in 1986 adjusted annually thereafter) maintains an "excessive trade surplus" (a ratio of bilateral nonpetroleum exports over nonpetroleum imports of 175 percent; a total bilateral nonpetroleum surplus with the United States in excess of $3 billion; and a global trade surplus). No ITC determinations are required if the U.S. merchandise trade deficit is less than 1.5 percent of GNP.

B. Unwarranted Surplus Determination. Within 15 days after the ITC determination, the USTR must determine whether any "excessive surplus" country maintains a pattern of unjustifiable, unreasonable or discriminatory trade policies or practices that have a significant adverse effect on United States commerce and contribute to the excessive trade surplus of that country, based upon the section 181 annual report, findings under section 301 or antidumping and countervailing duty laws, and other relevant information (including GATT findings). If the USTR finds in the affirmative, then items C, D, and E below would apply.

C. Negotiations and agreements to achieve elimination or reduction of unwarranted practices. The USTR is required to enter into negotiations with each "excessive and unwarranted" surplus country. The purpose of such negotiations is to achieve a more balanced and reciprocal bilateral trading relationship through an arrangement which:

1. substantially reduces such country's "unwarranted" policies, or
2. substantially reduces the effects of such policies on U.S. commerce.

In determining whether such an arrangement is satisfactory, the USTR shall, to the extent possible, estimate the commercial value of such country's "unwarranted policies" and shall be satisfied that the arrangement will allow U.S. firms a realistic opportunity to improve their share of bilateral trade by such an amount.

D. Action by the USTR if no satisfactory agreement is reached. If, after six months (with a two-month extension for compelling reasons) the USTR is unable to conclude a satisfactory arrangement, then he shall, subject to Presidential direction, take any of the actions specified in section 301(b) against all unjustifiable, unreasonable or discriminatory policies or practices found to exist (either during his initial determination of "unwarranted surplus countries" or during negotiations) in an amount equivalent to the burden or restriction caused by these policies or practices.

E. Waiver, modification, and termination authority. The USTR would be permitted to waive retaliatory action against some or all of the foreign "unwarranted policies" if:

1. in the case of unjustifiable policies or practices, he determines that retaliation would cause substantial harm to the national economic interests of the U.S.
2. in the case of other practices (unreasonable, discriminatory), the economic harm of retaliation would be greater than the harm caused by the foreign policy or practice.

The Congress would have 60 days to disapprove the USTR waiver under the section 151 fast-track provisions.

USTR could terminate or modify its action on the same ground provided under section 307, where the GATT rules against U.S. action or the foreign country eliminates its practice.

F. Further authorized action against currency manipulation. Secretary of the Treasury would be required to determine whether any "excessive surplus country" is maintaining its currency at an artificially low level in a manner that does not reflect the country's underlying competitive strength in world markets. If he finds affirmative, Treasury must negotiate with such country to seek a more realistic alignment of its currency. If such negotiations have not achieved a satisfactory result, the President may direct the Treasury Secretary to impose an exchange rate equalization tariff to offset the effects of such misalignment.

Section 127. Conforming Amendments and Effective Date

Section 127 sets forth conforming amendments to the Trade Act of 1974 and effective dates for the amendments made under Chapter 2. Among the conforming changes is an amendment to require that the semi-annual report to the Congress required under section 306(3) of the Trade Act of 1974 on section 301 cases describe the commercial effects of section 301 actions, in order to provide a better understanding of the track record of national economic benefits and costs of such actions.

Section 128. Sense of Congress Relating to the Expeditious Disposition of 301 Cases Regarding Unfair Foreign Agricultural Export Practices

Sense-of-Congress provision that the USTR shall take all steps to conclude as soon as possible all pending section 301 cases involving unfair foreign agricultural export practices, including export subsidies and differential export taxes.

Subtitle C—Relief from Injury Caused by Import Competition

Chapter 1—Industry Relief from Injury Caused by Import Competition

Chapter 1 of Subtitle C amends Chapter 1 of Title II of the Trade Act of 1974 as amended (commonly referred to as "section 201, or the "escape clause"). Section 201 sets forth the procedures and standards for domestic industries to obtain temporary relief from increased import competition which has resulted in serious injury.

Section 131. Import Relief

Section 131 makes the following amendments to section 201 of the Trade Act of 1974 as amended.

A. Transfers the decision-making authority from the President to the USTR.

B. Authorizes temporary emergency import relief for perishable products if the ITC has monitored imports of a perishable product for at least 90 days, and finds (within 21 days of a section 201 petition) a reasonable indication that such industry is vulnerable to serious injury from increased imports. In such a case, the USTR would grant provisional import relief (tariffs, quotas, or suspension of liquidation), unless he determined relief not to be in the national economic interest.

C. Authorizes provisional import relief (suspension of liquidation and retroactivity of any relief granted by the USTR) if the ITC makes an affirmative injury determination and also determines that critical circumstances exist. Suspension of liquidation would go into effect upon the ITC's affirmative determination; but the USTR could withdraw it if the USTR decides provisional relief is not in the national economic interest.

D. Allows a petitioner to submit, at any time prior to the ITC injury determination, a statement of proposed adjustment measures. Such statement should include an assessment of problems facing the industry, recommendations on actions the domestic industry could take to enhance competitiveness or facilitate adjustment, recommendations on actions the government could take, and an explanation of how import relief will assist in achieving such objectives.

E. Provides the petitioner with an opportunity to consult with other members of the domestic industry and with the USTR and other government officials concerning recommendations which might be appropriate to include in a statement of proposed adjustment measures.

F. Requires the ITC to make its injury determination and, where appropriate, its critical circumstances determination, within four months of the petition.

G. Makes certain amendments to the factors which the ITC must consider in its injury analysis, to ensure that only domestic production is included, and to include diversion and capital formation ability when considering threat of serious injury.

H. Clarifies that, in determining whether imports are a substantial cause of serious injury, the ITC shall not aggregate factors relating to recession and consider them as one single cause of injury.

I. Authorizes the ITC to consider the seasonal nature of perishable agricultural imports and the impact of such imports on domestic producers who harvest or market during that season or period of the year, both in determining injury and in recommending appropriate relief.

J. Authorizes the ITC, in appropriate circumstances, to disregard imports into geographically isolated markets for purposes of determining serious injury and appropriate remedy.

K. Provides that if the ITC makes an affirmative injury determination, workers and firms within the injured industry would be automatically certified as eligible to apply for trade adjustment assistance (TAA) benefits (whether or not the USTR ultimately provides import relief), if petitions are filed within three years after the injury determination.

L. Requires the ITC to make a remedy recommendation within two months of its injury determination. The ITC shall recommend relief that will be most effective to prevent or remedy the serious injury and facilitate long-term competitiveness or, if relief will not necessarily facilitate competitiveness, the relief that will prevent or remedy the serious injury.

M. Expands the remedy options which the ITC may consider to include negotiation of orderly marketing agreements.

N. Requires the ITC to consider proposed adjustment measures and conditions of competition in determining what remedy to recommend.

O. Requires the ITC, in its report to the USTR, to estimate the effects of the recommended relief on consumers, on other sectors of the economy, and on taxpayers, communities, and workers.

P. Requires the USTR to provide such relief as is necessary to prevent or remedy the serious injury and facilitate adjustment, unless the USTR determines (1) the provision of any relief would threaten national security, or (2) the economic costs of providing any relief are so great they outweigh the economic and social benefits of providing relief.

Q. Expands the remedy options which USTR may consider to include international negotiations to address the underlying cause of the import problem.

R. Requires the ITC to report annually on the efforts made by the domestic industry to adjust and on conditions of competition in the industry.

S. Authorizes the ITC to recommend modifications in the form or level of relief granted, as appropriate to account for changed economic circumstances. USTR would have 21 days to approve or disapprove any modification recommended by ITC.

Chapter 2—Industry Relief from Market Disruption Caused by Imports from Non-Market Economy Countries

Chapter 2 amends section 406 of the Trade Act of 1974. Section 406 authorizes the President to provide temporary import relief in the form of tariffs or quotas if imports from communist countries are causing market disruption. No evidence of unfair trade practices is required, or taken into account. Market disruption exists when imports of an article, like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

Section 135. Market Disruption

Section 135 amends section 406 of the Trade Act of 1974 in the following ways:

A. Provides for application of section 406 to "nonmarket countries" rather than "communist countries."

B. Replaces the requirement that imports be increasing "rapidly" with the requirement (currently in section 201) that imports be increasing (either absolutely or relative to domestic production).

C. Lowers the causation test from "significant cause of material injury" to "important cause of material injury".

D. In determining market disruption, requires the ITC to consider a number of factors, including the volume of imports, the effect of imports on U.S. prices, the impact of imports on U.S. producers (all factors currently used in determining material injury) as well as evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

E. Requires the ITC, in appropriate cases, to cumulate imports from two or more nonmarket economies subject to investigation.

F. Authorizes a variable tariff remedy, based on average domestic and import prices.

G. Defers the effective date of these amendments for countries with whom the U.S. has conflicting obligations under a bilateral agreement.

Chapter 3—Trade Adjustment Assistance

The trade adjustment assistance (TAA) programs for workers and firms under Chapters 2 and 3 of Title II of the Trade Act of 1974 were first established under the Trade Expansion Act of 1962 for the purpose of assisting in the special adjustment problems of workers and firms dislocated as a result of a Federal policy of reducing barriers to foreign trade. The programs were amended extensively in the Trade Act of 1974 and under the Omnibus Budget Reconciliation Act of 1981. The programs were reauthorized by the Consolidated Omnibus Budget Reconciliation Act of 1985 for six years, until September 30, 1991. Chapter 3 of this bill amends the TAA programs to create greater incentives to encourage training and reemployment under the worker trade adjustment assistance (TAA) program. The amendments are as follows:

Section 141. Trade Readjustment Allowance

Provides a worker taking a new job paying less than his previous job the option to collect up to 50 percent of his weekly trade readjustment allowance (TRA) entitlement as a supplemental wage allowance, up to 80 percent of his previous wage.

Section 142. Training for Workers

Requires a worker to be enrolled in training or remedial education in order to receive TRA benefits, unless his plant has not closed permanently.

Entitles a worker approved for training to a voucher in an amount not to exceed $4,000 to be used for training, remedial education, or relocation.

Section 143. Cooperating State Agency Functions

Requires State administering agencies to provide full information to workers about the TAA program at the time a worker files for unemployment compensation.

Section 144. Supplemental Worker Training Programs

Authorizes the Secretary of Commerce to provide grants or loans, not to exceed $1 million, to support training programs administered by educational institutions and firms for workers eligible for TAA.

Section 145. Automatic Certification of Eligibility to Apply for Adjustment Assistance

Provides for automatic certification by the Secretary of Commerce or Secretary of Labor of a group of workers or a firm as eligible to apply for TAA under specified conditions.

Section 146. Adjustment Assistance Trust Fund

Establishes an Adjustment Assistance Trust Fund, consisting of revenues generated by import relief granted under section 201, collected in section 301 actions, and by auctioning of import licenses. Such revenues will be earmarked for use in trade adjustment assistance and community assistance programs.

Section 147. Imposition of Small Uniform Duty on All Imports

The President must seek an international agreement to permit imposition of an import fee to finance worker adjustment assistance and, if successful, impose such a fee.

Section 148. Effective Dates and Conforming Amendments

Sets forth effective dates and conforming amendments to the table of contents to the Trade Act of 1974.

Subtitle D—Relief from Injury Caused by Subsidies and Dumping

Subtitle D makes numerous amendments to the Tariff Act of 1930 as it relates to countervailing and antidumping duties.

Section 151. Reference to the Tariff Act of 1930

States that, unless otherwise provided, amendments in this subtitle refer to the Tariff Act of 1930.

Section 152. Processed Agricultural Products

A. Clarifies that the ITC may consider growers or producers of raw agricultural products as part of the domestic industry producing a processed agricultural product if two conditions exist: (1) the processed product is produced from the raw agricultural product through a single continuous line of production, and (2) there is a substantial coincidence of economic interest between the growers and the processors.

B. Expands the definition of "interested party" to include a coalition or trade association which is representative both of growers and processors of a processed agricultural product.

Section 153. Definition of Subsidy

As a substitute for the resource input subsidy provision, clarifies that the determination as to whether a domestic subsidy is countervailable must be based on whether the actual effect of such subsidy as bestowed aids a specific industry, or groups of industries, rather than on a mere examination of the legal nature of the subsidy program. Also provides for the use of external benchmarks, under appropriate circumstances, in determining the existence of, and in measuring the amount of, subsidy.

Section 154. Definition of Material Injury and Threat of Material Injury

A. Clarifies that the ITC is required, in its material injury analysis, to consider each of the specified factors in every case, and to explain its analysis of each factor so considered. Also clarifies that, in examining the impact of imports on domestic producers, no single factor should be dispositive.

B. Amends the definition of "domestic industry" to include only domestic operations of U.S. producers for purposes of determining injury.

C. Requires the ITC, in determining material injury and, to the extent practicable, threat of material injury, to cumulate the impact of imports from two or more countries, if such imports were subject either to countervailing duty or antidumping investigations within the past 12 months, unless such imports are negligible in volume and effects.

D. Authorizes the ITC to disregard, in appropriate circumstances, imports into geographically isolated markets for purposes of determining material injury and appropriate remedy.

E. Provides for additional factors for the ITC to consider in determining whether there is a threat of material injury by reason of dumped or subsidized imports: (a) diversion of exports to the U.S. market; (b) repeated dumping in world markets, as evidenced by antidumping findings in other GATT countries; and (c) likelihood of product-shifting in cases involving imports both of raw and processed agricultural products.

Section 155. Prevention of Circumvention of Antidumping and Countervailing Duty Orders

Amends procedures under the antidumping and countervailing duty laws to prevent circumvention of final orders through assembly or finishing operations or minor alterations of merchandise entered. Clarifies that "minor alterations" includes minor processing, even if such processing results in a different TSUS number.

Section 156. Diversionary Input Dumping

Amends the antidumping law to provide for consideration of diversionary input dumping—the purchase by a foreign manufacturer of a major material or component which has previously been found by the Commerce Department to have been sold at less than fair value in the United States. The provision would only apply if imports of the major material or component into the United States have declined while imports of the manufactured product currently under investigation have increased. If diversionary input dumping is occurring, then Commerce shall use constructed value as the basis for determining the foreign market value of the manufactured imports, and shall make adjustments to reflect the benefit bestowed to the manufacturer as a result of the purchase of the material or component at less than fair value.

Section 157. Application of Countervailing Duty Laws to Nonmarket Economy Countries

Amends the countervailing duty law to provide for its application to nonmarket economy countries to the extent that a subsidy can be identified and measured.

Section 158. Access to Information

Amends procedures for disclosure of confidential information under administrative protective order.

Section 159. Drawback Treatment

Prohibits antidumping and countervailing duties paid on imported merchandise from being eligible for refund under drawback provisions.

Section 160. Application of Countervailing and Antidumping Duties to Governmental Importations

Prohibits any U.S. Government purchases of dumped or subsidized merchandise from being exempt from antidumping or countervailing duties.

Section 161. Certification of Submissions in Countervailing and Antidumping Proceedings

Requires submissions from parties involved in an antidumping or countervailing duty proceeding to be certified as to their accuracy.

Section 162. Explanation of Significant Deviations From Administration Precedent; and

Section 163. Correction of Ministerial Errors

Requires Commerce to explain decisions which deviate from prior precedents and to correct clerical errors within a limited time period.

Section 164. Downstream Monitoring

Provides new procedures to monitor imports of downstream products to assist in identifying the diversionary impact of significant antidumping and countervailing duties on major materials or parts. Commerce would determine which downstream products are appropriate to be monitored, and the ITC would monitor levels of trade in these products and provide quarterly reports.

Section 165. Multiple Offenders

Adds a new provision on multiple dumping offenses which: (1) provides new procedures for monitoring imports in a particular product category from a particular foreign manufacturer whose products have been subject to dumping findings; and (2) provides for self-initiation of expedited antidumping investigations when such monitoring indicates that further dumping may be occurring.

Section 166. Civil Actions for Recovery of Damages

Section 166: (a) repeals the criminal penalties under the Antidumping Act of 1916; (b) establishes a rebuttable presumption with respect to multiple offenders of "intent to injure or destroy" a domestic industry; and (c) clarifies that the term "actual market value" has the same meaning as "foreign market value" under Title VII of the Tariff Act of 1930.

Section 167. Compensation Program

Sets aside dumping duties for compensation of private parties injured by dumping.

Section 168. Injury Test for Certain Merchandise Subject to a Countervailing Duty Under Section 303

Requires an ITC material injury investigation on any outstanding countervailing duty order or pending investigation on duty-free merchandise upon Commerce's notification that an injury investigation is required by U.S. international obligations, as determined by the USTR.

Section 169. Studies

A. Requires Commerce to study and report to Congress within one year on market-oriented reforms being undertaken by the People's Republic of China and on their implications for application of the U.S. antidumping law to imports from China.

B. Requires the USTR to review Subsidies Code commitments undertaken by various countries with the United States and report within six months on whether commitments have been met and how to improve compliance or implementation of such commitments.

Subtitle E—Intellectual Property Rights

This subtitle sets forth Congressional findings and purposes; amends section 337 of the Tariff Act of 1930; and creates a mechanism for establishing adequate and effective protection of U.S. intellectual property rights in foreign countries.

Section 171. Congressional Findings and Purposes

Sets forth a number of findings and purposes with regard to U.S. intellectual property rights.

Section 172. Protection Under the Tariff Act of 1930

Section 172 amends section 337 of the Tariff Act of 1930, which provides for relief against unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale, if the effect or tendency of such actions is to destroy or substantially injure an efficiently and economically operated industry in the United States. Section 172 makes the following changes to section 337:

A. Eliminates the injury requirement in certain intellectual property rights cases. (The domestic industry requirement is retained with an expanded definition.)

B. Shortens time period for issuance of temporary exclusion orders to 90 days after initiation (extension of 60 days permitted for more complicated cases).

C. Clarifies that cease and desist orders may be issued "in addition to or in lieu of" exclusion orders and increases the penalty for violations of such orders to "$10,000 or twice the domestic value of the articles."

D. Provides for the ITC to use default procedures against persons who have been served with notice of proceedings and fail to appear to answer complaint in cases where complainant seeks relief limited to that person.

E. In cases where a party previously found to be in violation petitions the ITC, the burden of proof that he is no longer in violation is on the petitioner and relief may be granted only on the basis of new evidence or on other grounds permissable under the Federal Rules of Civil Procedure.

F. Provides procedures for treating confidential information submitted in section 337 cases.

G. Explictly authorizes the ITC to issue consent orders as the basis of settlement agreements.

H. Allows the ITC to prescribe sanctions for abuse of discovery and abuse of process.

I. Transfers to the USTR (from the President) authority to review and disapprove ITC determinations and proposed actions.

Section 173. Action Against Countries That Deny Adequate and Effective Protection of Intellectual Property Rights

Creates a mechanism to improve international intellectual property rights protection through identification by the USTR of priority foreign countries and self-initiation of section 301 investigations. Section 301 procedures apply generally in such investigations, except that a recommendation by the USTR to the President for possible action is required within six months of initiation, with a possible six-month extension in certain circumstances.

Subtitle F—Organization and Functions of Trade Agencies

Chapter 1—Office of the United States Trade Representative

Section 181. Functions

A. Strengthens the role of the U.S. Trade Representative. Specifies that the USTR has primary responsibility for developing and coordinating implementation of international trade policy, international trade negotiations, and trade policy guidance, and is principal trade spokesman; the USTR must consult and be advised by the interagency trade organization.

B. Expresses the sense of Congress that the USTR should be the senior representative on any body the President establishes dealing predominantly with international trade matters and should be a participant in all meetings where international trade is a major topic.

C. Specifies the agency membership of the statutory inter-agency trade organization (chaired by the USTR) to assist the President and to advise the USTR; expands the organization's responsibilities to specifically include development and implementation of U.S. trade policy objectives.

Section 182. Functions of the United States Trade Representative in Administering GSP

Section 182 transfers all authorities, determinations, and other functions under the GSP program from the President to the U.S. Trade Representative.

Chapter 2—United States International Trade Commission

Section 185. Annual Report on Competitive Conditions Affecting the National Economy; Import Monitoring

Requires the ITC to submit to Congress and to the USTR, on an annual basis, studies on key sectors of the U.S. economy, focusing on global competitiveness, application of U.S. trade laws and policies, and implications for U.S. national economic security. Such reports would be taken into account by the USTR in developing its trade policy agenda. Also establishes an ITC trade impact monitoring system.

Section 186. Trade Remedy Assistance Office

Improves and broadens the scope of the Trade Remedy Assistance Office by assuring its independence in the ITC and expanding its functions to include technical and legal assistance and advice to small business and other eligible petitioners in preparing petitions and obtaining trade law remedies.

Section 187. Treatment of Confidential Information by Commission

Allows the ITC not to release confidential business information to the President or the Congress in section 332 investigations without the consent of the affected party.

Section 188. Treatment of Commission Under Paperwork Reduction Act

Designates the ITC as an "independent regulatory agency" for purposes of the Paperwork Reduction Act of 1980.

Subtitle G—Miscellaneous Trade Law Provisions

Section 191. Imports Affecting National Security

Imposes a nine-month time limit for national security investigations by the Secretary of Commerce. Imposes a 90-day time limit for the President to decide whether to restrict imports that threaten the national security; he must proclaim action with 15 days. Provides explicit authority for the President to enforce bilateral agreements negotiated on machine tools pursuant to the President's decision of May 1986.

Section 192. Generalized System of Preferences

Provides for reallocation of GSP benefits to certain debtor countries by waiving product "competitive need" ceilings under existing authority if certain circumstances exist, including good faith efforts by the country to meet its debt obligations.

Section 193. Treatment of Eligible Articles Under the Caribbean Basin Economic Recovery Act

Authorizes the President to withdraw, suspend, or limit duty-free treatment on particular articles under the Caribbean Basin Initiative in lieu of removing country beneficiary status.

Section 194. Extension of International Coffee Agreement Act of 1980

Extends the effective period of the International Coffee Agreement Act of 1980 until October 1, 1989.

Section 195. Steel Imports

Provides specific enforcement authority to prevent circumvention of negotiated quantitative restraints on steel imports.

Section 196. Coal Exports to Japan

Expresses the sense of the Congress that the objectives of the 1983 Joint Policy Statement on Energy Cooperation as it relates to U.S. exports of coal, including metallurgical coal, to Japan have not been achieved and calls on the President to take certain actions to increase U.S. coal exports to Japan.

Section 197. Use of United States Vessels To Transport Imported Automobiles

Requires the President to negotiate trade agreements with each foreign country from which the United States imports 50,000 or more automobiles in order to eliminate unfair, restrictive, or discriminatory practices in the maritime transportation of such automobiles. Also requires a semiannual report on the progress of negotiations.

Section 198. Purchases of United States-Made Automotive Parts by Japan

Expresses the sense of the Congress that the Congress strongly supports current negotiations to increase opportunities for U.S. automobile parts producers to supply parts for Japanese automobiles; determines that the success of such negotiations will be measured in part by a significant increase in U.S. sales; and directs the Administration to report to Congress on the negotiations and on any agreements reached.

TITLE II—INTERNATIONAL TRADE IN TELECOMMUNICATIONS PRODUCTS AND SERVICES

Sections 201 through 211 provide specific authority and remedies to address the lack of foreign market openness in telecommunications trade.

A. Requires USTR investigation of foreign trade barriers to telecommunications exports and determination within six months as to whether the barriers deny fully competitive foreign market opportunities to U.S. firms. Petitions by interested parties and self-initiation also may prompt an investigation and final determination. The USTR can exclude countries if their market is not substantial. Requires reports to Congress.

B. Requires the President to negotiate with countries identified under subparagraph 1 and lays out objectives of negotiations. If agreement is not reached, the President is required to take certain countermeasures within a time certain (from 18 months to three-and-one-half years, depending upon subsequent Presidential decisions and Congressional action) in order to achieve the objectives. He is given a broad selection of options for such action.

C. On the basis of annual reviews, if the USTR determines a country is not in compliance with its telecommunications agreement, or otherwise denies fully competitive market opportunities under the agreement, the USTR is required to take action to offset the violation and restore the balance of concessions.

D. Provides three-and-one-half-year negotiating authority, "fast-track" Congressional implementation, and compensation authority in the event that retaliatory actions taken by the President or the USTR are GATT-illegal. Defines telecommunications product, and specifies that nothing in the Act shall be construed to require action inconsistent with U.S. international obligations.

TITLE VIII—TARIFF AND CUSTOMS PROVISIONS

Includes seventy-five miscellaneous trade and tariff issues covering duty suspensions, duty-free measures, classification changes, and customs-related nontariff matters.

Section 800 applies to all other sections of this title. It states that whenever an amendment or repeal is expressed in terms of an amendment to, or repeal of, a schedule, item, headnote, or other provision, the reference shall be considered to be made to a schedule, item, headnote, or other provision of the Tariff Schedules of the United States (19 U.S.C. 1202).

Subtitle A—Permanent Changes in Tariff Treatment

Section 801 contains a provision relating to the tariff treatment of casein.

Section 802 contains a provision relating to the tariff classification of salted and dried plums.

Section 803 contains a provision establishing equal and equitable classification and duty rates for imported grapefruit products.

Section 804 contains a provision making permanent the temporary "free" rate of duty on imported hatters' fur which expired on December 31, 1985.

Section 805 contains a provision clarifying the duty treatment of certain types of plywood.

Section 806 contains a provision relating to the tariff classification of certain work gloves.

Section 807 contains a provision amending schedule 3 to provide for additional statistical annotations on woven fabrics of man-made fibers.

Section 808 contains a provision relating to the tariff classifications of certain silicone resins and materials.

Section 809 contains a provision to change the tariff treatment with respect to naphtha and motor fuel blending stocks.

Section 810 contains a provision relating to the tariff classification of slabs of iron or steel.

Section 811 contains a provision regarding the classification of television apparatus and parts thereof.

Section 812 contains a provision relating to the tariff classification of extracorporeal shock wave lithotripters.

Section 813 contains a provision relating to the tariff treatment of uranium hexafluoride (UF_6).

Section 814 contains a provision eliminating the special marking requirements for imported watches and clocks and components thereof.

Section 815 contains a provision permitting the importation of furskins from the Union of Soviet Socialist Republics.

Section 816 sets forth the effective dates of the provisions of Subtitle A.

Subtitle B—Temporary Changes in Tariff Treatment

Section 821 contains a provision extending the suspension of duties on color couplers and coupler intermediates used in the manufacture of photographic sensitized material.

Section 822 contains a provision suspending the duty on P-sulfobenzoic acid, potassium salt.

Section 823 contains a provision suspending the duty on 2,2'-oxamido bis-[ethyl 3-(3,5-di-tert-butyl-4-hydroxyphenyl)propionate].

Section 824 contains a provision suspending temporarily the duty on dicyclohexylbenzothiazylsulfenamide.

Section 825 contains a provision suspending temporarily the duty on 2,4 Dichloro-5-sulfamoylbenzoic acid (also known as lasamid).

Section 826 contains a provision suspending temporarily the duty on derivatives of N-[4-(2-hydroxy-3-phenoxypropoxy)-phenyl]acetamide.

Section 827 contains a provision suspending temporarily the duty on mixtures of 1,2-dimethyl 1-3,5-diphenylpryazolium methyl sulfate (difenzoquat methyl sulfate).

Section 828 contains a provision extending the duty-free treatment for dicofol.

Section 829 contains a provision relating to the customs treatment of certain knitwear fabricated in Guam.

Section 830 contains a provision suspending temporarily the duty on 3.7-Bis(dimethylamino)-phenazathionium chloride (methylene blue) to be used as a process stabilizer in the manufacture of organic chemicals.

Section 831 contains a provision suspending the duty on 3,5 dinitro-o-toluamide.

Section 832 contains a provision suspending the duty on secondary-butyl chloride.

Section 833 contains a provision suspending temporarily the duty on nonbenzenoid vinyl acetate-vinyl chloride-ethylene terpolymer, containing by weight less than 50 percent derivatives of vinyl acetate.

Section 834 contains a provision suspending temporarily the duty on tungsten ore.

Section 835 contains a provision suspending temporarily the duty on certain stuffed or filled toy figures.

Section 836 contains a provision permitting free entry into the United States of the personal effects, equipment, and other related articles of foreign participants, officials, and other accredited members of delegations involved in the games of the Tenth Pan American Games to be held in Indianapolis, Indiana, in 1987.

Section 837 contains a provision suspending the duty on carding and spinning machines specially designed for wool.

Section 838 contains a provision suspending the duty on certain bicycle parts and continuing the present treatment of bicycle component parts within foreign trade zones.

Section 839 contains a provision suspending the duty on 1-(3-Sulfopropyl) pyridinium hydroxide.

Section 840 contains a provision suspending temporarily the duty on d-6-Methoxy-a-methyl-2-naphthaleneacetic acid and its sodium salt.

Section 841 contains provisions suspending temporarily the duty on certain pesticides: (1) dinocap; (2) mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol) and application adjuvants; and (3) mixtures of mancozeb and dinocap, stabilizer and application adjuvants.

Section 842 contains a provision suspending temporarily the duty on cross-linked polyvinylbenzyltrimethylammonium chloride (cholestyramine resin USP).

Section 843 contains a provision suspending temporarily the duty on 3-amino-3-methyl-1-butyne.

Section 844 contains a provision suspending temporarily the duty on mixtures of maneb, zineb, mancozeb, metiram, stabilizer, and application adjuvants.

Section 845 contains a provision modifying the article description, and extending the temporary duty suspension, on nicotine resins.

Section 846 contains provisions regarding temporary duty-free treatment of needles for hosiery knitting machines and certain hosiery knitting machines.

Section 847 contains a provision suspending temporarily the duty on silk yarn.

Section 848 contains a provision suspending temporarily the duty on 3-Ethylamino-p-cresol.

Section 849 contains a provision suspending temporarily the duty on 4-chloro-2,5-dimethoxyaniline (also known as chlor amino base).

Section 850 contains a provision suspending temporarily the duty on 2,2-bis(4-cyanatophenyl).

Section 851 contains a provision suspending temporarily the duty on 2-[(3-Nitrophenyl)sulfonyl]ethanol (also known as nitro sulfon B).

Section 852 contains a provision suspending temporarily the duty on phenylmethylaminopyrazole.

Section 853 contains a provision suspending temporarily the duty on 1-(4-(1,1-dimethylethyl)phenyl-4-(hydroxydiphenylmethyl-1-piperidinyl)-1-butanone.

Section 854 contains a provision suspending temporarily the duty on fluazifop-p-butyl.

Section 855 contains a provision suspending temporarily the duty on benzethonium chloride.

Section 856 contains a provision suspending temporarily the duty on malononitrile.

Section 857 contains a provision suspending temporarily the duty on sethoxydim.

Section 858 contains a provision suspending temporarily the duty on metaldehyde.

Section 859 contains a provision suspending temporarily the duty on certain mixtures of cross-linked sodium polyacrylate polymers.

Section 860 provides for temporary duty-free treatment for cyclosporine.

Section 861 contains a provision suspending temporarily the duty on paraldehyde.

Section 862 contains a provision lowering temporarily the rate of duty on glass inners designed for vacuum flasks.

Section 863 provides temporarily a lower rate of duty for certain offset printing presses of the sheet-fed type weighing 3,500 pounds or more.

Section 864 contains a provision relating to the duties on jacquard cards.

Section 865 contains a provision suspending temporarily the duty on certain parts of indirect process electrostatic copying machines.

Section 866 provides duty-free entry for extracorporeal shock wave lithotripters imported by non-profit institutions.

Section 867 contains a provision suspending temporarily the duty on certain transparent plastic sheeting.

Section 868 contains a provision suspending temporarily the duty on certain specialty yarns used in the manufacture of wigs for dolls.

Section 869 contains extensions of certain temporary duty suspensions:

Subsection (1) provides duty-free entry for certain mixtures of hot red peppers and salt.

Subsection (2) contains a provision making duty-free the rate of duty on fresh cantaloupes imported at certain times, and for other purposes.

Subsection (3) contains a provision extending the temporary duty-free treatment for certain wools.

Subsection (4) contains a provision extending the duty-free treatment of certain needlecraft display models.

Subsection (5) contains a provision extending the suspension of duty on triphenyl phosphate.

Subsection (6) provides for extending the existing suspension of duty on menthol feedstocks.

Subsection (7) contains a provision extending the suspension of duty on isometric mixtures of ethylbiphenyl.

Subsection (8) contains a provision extending the suspension of duty on sulfapyridine.

Subsection (9) contains a provision extending the suspension of import duties on synthetic rutile.

Subsection (10) contains a provision extending the temporary suspension of duties on certain clock radios.

Subsection (11) contains a provision extending the temporary duty-free treatment of machines designed for heat-set, stretch texturing of continuous man-made fibers.

Subsection (12) provides for the temporary suspension of duty on certain small toys.

Subsection (13) contains a provision extending the suspension of duty on stuffed dolls, certain toy figures, and the skins thereof.

Subsection (14) contains a provision extending the temporary duty-free treatment of umbrella frames.

Subsection (15) contains a provision extending the existing suspension of duty on crude feathers and down.

Section 870 provides for the effective dates of the provisions of subtitle B.

Subtitle C—Other Customs Provisions

Section 871 contains a provision regarding customs bond cancellation standards.

Section 872 creates a scofflaw penalty provision that directs the Secretary of Treasury to prohibit the importation of foreign goods by any person that was either convicted of, or assessed a civil penalty for, three separate violations of one or more customs laws involving fraud or criminal culpability over a seven-year period.

Section 873 contains a provision increasing the penalties for intentional marking violations and modifying the marking of containers of imported mushrooms.

Section 874 contains a technical provision regarding customs forfeiture.

Section 875 contains a provision relating to the application of the drawback provisions of the Tariff Act of 1930 to certain importations of raw cane sugar.

Section 876 contains a provision for improving the enforcement of the restrictions against imported pornography.

Section 877(a) provides for the duty-free entry of certain structures and parts for use in the W.M. Keck Observatory Project, Mauna Kea, Hawaii.

Section 877(b) contains a provision for the relief of Rukert Marine Corporation of Baltimore, Maryland.

Section 877(c) provides for waiver of the requirement that proof of actual use be furnished within three years after the date an article is entered, and for reliquidation of certain entries of tubular tin products.

Section 878 contains a provision relating to user fees for customs services at Pontiac/Oakland, Michigan, Airport.

Subtitle D—Implementation of Nairobi Protocol

Subtitle D contains provisions implementing the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials.

COMMITTEE ACTION

The Committee held public hearings on comprehensive trade legislation on February 5 and 10, 1987, followed by hearings before the Subcommittee on Trade on February 18, 20, 26, and 27. Testimony was received from an extensive array of witnesses, from the Administration, organized labor, farm organizations, importing groups and various private sector representatives from a broad cross-section of American industry.

H.R. 3, the Trade and International Economic Policy Reform Act of 1987, was introduced on January 6, 1987. On March 12, the Subcommittee on Trade ordered favorably reported, by a voice vote, a substitute amendment for the original language of Titles I, II, and

VIII, as referred to the Committee. The substitute amendment was ordered reported by the Committee on March 25, 1987.

SECTION-BY-SECTION ANALYSIS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

TITLE I—TRADE LAW AMENDMENTS

Subtitle A—National Trade Policy Agenda

Section 101. National Trade Policy

Present law

There are no current provisions of U.S. law which establish national policy objectives or mandate broad Presidential action with regard to the trade and current account deficits exclusively. Various provisions of law authorize the President or Executive departments to conduct trade negotiations (Title I of the Trade Act of 1974); to provide import relief (Title II of the Trade Act); to impose balance of payments measures (Section 122 of the Trade Act) and to impose measures against unfair trade policies or practices (including section 301 of the Trade Act and Title VII of the Tariff Act of 1930).

Explanation of provisions

Section 101 of H.R. 3, as amended, contains a new statement of findings, policy objectives and Presidential action with regard to the U.S. trade and current account deficits. This section establishes, for the first time, an unequivocal statement by Congress that it is the policy of the United States to reduce these deficits and to seek to achieve equilibrium in such accounts by 1992. It also states U.S. policy with regard to the need for competitive exchange rates. Finally, section 101 calls upon the President to use all appropriate powers to achieve the objectives of greater balance in the trade and current accounts and to report annually to Congress on progress being made toward such objectives.

Congressional Findings

Subsection (a) sets forth the basic Congressional finding that the United States is confronted with a fundamental disequilibrium in its trade and current account balances and a rapid increase in its net external debt. It states further that such trends are a result of numerous factors, both macroeconomic (such as U.S. budget deficit, disparities between economic policies of major trading nations, and the third world debt problem) and policy driven (such as trade barriers and unfair trade practices, structural defects in world trade rules and inadequacies in U.S. trade policy).

The findings state the danger to the U.S. and world economy if these deficits continue, citing the likelihood of a decline in U.S. competitiveness and a lessening of living standards for U.S. workers and consumers. Ultimately, this would bring about a stagnation in world-wide trade and jeopardize the economic security of the free world.

The findings state that it is therefore essential, and should be the highest priority of the United States, to ensure future balance and stability in our external trade through broad changes in economic, trade and monetary policy.

Statement of National Policy

Subsection (b) states three fundamental objectives of U.S. policy:

(1) to reduce substantially the deficits in the national trade and current accounts;

(2) to seek to achieve, no later than 1992, a more consistent equilibrium in such accounts, allowing only for reasonable fluctuations during periods of economic expansion or contraction; and

(3) to maintain, through greater cooperation and leadership within the international financial system, a system of reasonably stable exchange rates, to be effected through measures designed to ensure that the value of the dollar remains at a level designed to maintain the competitiveness of United States exports and prevent disruptive surges in United States imports.

Presidential Action

Subsection (c) requires the President to use all appropriate powers to achieve the national trade policy objectives set forth above. This would include use of his own powers in fiscal, monetary and trade policy, as well as recommending appropriate changes in economic, regulatory or fiscal policy to Congress. It also requires him to coordinate economic and monetary matters, with our trading partners.

Subsection (c) also requires annual reports to the Congress, in conjunction with the annual trade policy statement required under section 102 of this bill, on the progress he is making toward deficit reduction or the reasons why no progress is being made.

Congressional Action

Subsection (d) states the sense of the Congress that in developing future legislation it should give the highest priority to achieving the national policy goals of subsection (b).

Reasons for change

The purpose of Section 101 is to call the President's attention to the need to act swiftly and effectively in reducing our nation's trade deficit. The Committee finds and believes that a massive imbalance in our trade and current accounts is both economically and politically unsustainable. Eventually, the effects of this imbalance will be to undermine our economic stability, as we face mounting external debts and declining productive capacity here at home. The Committee is fearful that this could very easily result in a period of devastating economic shocks—a rapidly depreciating dollar, higher inflation and high interest rates—unless we act quickly to control the problem. While it is highly desirable to address the trade problem through realistic, positive measures aimed at curing the underlying economic causes and remedying unfair trade, the

Committee is aware of a growing movement to solve it through ever-increasing use of import barriers. This tendency will accelerate beyond control unless there is a concerted national effort to address the trade deficit in a responsible manner. This statement of policy objectives and mandate for broad Presidential action seeks to begin that effort.

Section 102. Annual National Trade Policy Agenda

Present law

No provisions.

Explanation of provision

Section 102 of H.R. 3, as amended, requires the U.S. Trade Representative by March 1 of each year to submit a statement to the House Committee on Ways and Means and the Senate Committee on Finance of (1) the U.S. trade policy objectives and priorities for that year and the reasons therefor; (2) actions proposed or anticipated to be undertaken during the year to achieve these objectives and priorities, including actions under the trade laws and any negotiations contemplated; (3) any proposed legislation necessary or appropriate to achieve these objectives; and (4) the progress that was made in achieving these trade policy objectives and priorities during the previous year. The USTR must seek advice from the appropriate private sector advisory committees and consult with the Committees before submitting the statement, and would utilize input from the competitiveness studies conducted by the U.S. International Trade Commission as provided under section 185 of this Act. The USTR must consult periodically with the Committees on the annual objectives and priorities with respect to the status and results of actions taken, and any developments which may require or result in changes of any objectives or priorities.

Reasons for change

The purpose of the provision is to address the widespread view that United States trade policy consists primarily of to particular current issues, without a clear, consistent overall policy direction or basis in agreed national objectives. The amendment is intended to fill this void and to focus thinking and attention annually on the development of an overall U.S. trade policy with a specific agenda of objectives and priorities, developed by the USTR in consultation with the Congress and private sector advisers. This consultative process, which would continue throughout the year as objectives and priorities are achieved or change in light of actual developments, is intended to rebuild and maintain a national consensus on the direction of U.S. trade policy.

The requirement of an annual trade policy statement is also consistent with other provisions in Title I to enhance the role of the USTR as the primary adviser to the President and to the Congress on international trade policy and administration of the trade agreements program. The statement is intended to focus higher priority attention to U.S. international trade interests and objectives and their role in overall national economic policy.

Section 103. Information and Advice From Private and Public Sectors Relating to Trade Policy and Agreements

Present law

Section 135 of the Trade Act of 1974 requires the President to seek information and advice from representatives of the private sector and non-Federal governmental sector on negotiating objectives and bargaining positions before entering into a trade agreement; the operation of any trade agreement; and other matters concerning administration of U.S. trade policy.

The committees consist of a 45-member Advisory Committee for Trade Negotiations (ACTN), appointed by the President to provide overall policy advice. It includes representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumers, and the general public, to meet at the call of the USTR. In addition, there are general policy advisory committees for industry, labor, agriculture, and services; sectoral or functional advisory committees representative of all industry, labor, agricultural, or service interests; and policy advisory committtees representing non-Federal governmental interests.

USTR and other appropriate agencies must consult with and obtain information and advice from the committees on a continuing and timely basis, including before and during negotiations. Committee members may be permitted to participate in international meetings but cannot speak or negotiate for the United States. The committees must meet at the conclusion of each trade agreement negotiation to provide the President, the Congress, and the USTR a report, including an advisory opinion as to whether and to what extent the agreement promotes U.S. economic interests and provides for equity and reciprocity within the sector or functional areas involved.

Explanation of provision

Section 103 of H.R. 3, as amended, amends section 135 of the Trade Act of 1974 to expand the statutory functions of the advisory committees to include information and advice on the development, implementation, and administration of U.S. trade policy and on priorities for actions under such policy. Consultations with the committees shall include, but are not limited to, the following policy elements:

(1) the principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement;

(2) the implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and the resolution of trade disputes;

(3) the actions taken under U.S. trade laws and the effectiveness of such actions in achieving trade policy objectives; and

(4) important developments in other areas of trade.

The advice shall be taken into account by the President in determining trade policy and negotiating priorities.

Section 135(b), as amended, renames ACTN the Advisory Committee for Trade Policy and Negotiations, to be appointed by the USTR, consisting of 45 members to represent non-Federal governments, labor, industry, agriculture, small business, services, retailers, and consumer interests, and to be broadly representative of key sectors and groups of the economy, particularly those affected by trade. The members shall be nominated by the USTR and appointed by the President and must reflect a balance between the political parties. The Committee shall meet quarterly or at the call of the USTR or two-thirds of its members.

Section 135, as amended, includes the individual policy advisory committees on investment and defense trade issues and explicitly authorizes the formation of special task forces, plenary meetings of chairmen, or other working groups. Members of the policy advisory committees would be appointed by the USTR in consultation with the appropriate department heads. Committee members may also be designated as advisors to negotiating delegations.

Each committee would be required at the conclusion of trade negotiations to report to the President, the Congress, and the USTR on whether and to what extent each trade agreement achieves U.S. negotiating objectives, as well as on whether the agreement provides for equity and reciprocity. Each report on a nontariff or bilateral trade agreement must be provided no later than the date the draft implementing bill is submitted to the Congress. During the course of consultations with the Congress, committee information and advice shall be made available to Congressional advisors.

Reasons for change

The amendments to section 135 significantly expand the consultation process with the private sector beyond their traditional role in advising on trade agreement issues. The amendments recognize the expanded scope of trade policy issues and the need for private sector expertise, input, and support throughout the process as an essential ingredient to a national consensus on U.S. trade policy. The private sector must be involved at earlier stages of the process concerning the development of trade policy and priorities for action, as well as in policy implementation and trade negotiations. The amendments also reflect and would continue the existing advisory committees that have been established for defense and investment trade policy issues.

Section 104. Congressional Liaison Regarding Trade Policy and Agreements

Present law

Section 161 of the Trade Act of 1974 provides for appointment at the beginning of each session of Congress of five official Congressional advisors by the Speaker of the House from the Committee on Ways and Means and five official advisers by the President of the Senate from the Committee on Finance to U.S. delegations to international negotiating sessions on trade agreements.

The USTR must keep each adviser and designated committee staff members informed of the objectives and status of negotiations and of any changes which may be recommended in U.S. law or administration to carry out any trade agreement.

Section 162 of the Trade Act of 1974 requires the President to transmit any trade agreement to the Congress with a statement of his reasons for entering into it.

Explanation of provision

Section 104 of H.R. 3, as amended, amends section 161 to expand significantly the consultation process presently required between the USTR and the Congress. The five official advisers selected from the Committee on Ways and Means and the Committee on Finance will provide advice on the development of trade policy and priorities for implementation, in addition to providing advice on trade negotiations and being accredited to U.S. delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

Section 161, as amended, authorizes the USTR to accredit additional members of the House and Senate as special advisers for specific trade policy matters or negotiations. Before granting accreditation, the USTR must consult with the chairmen and ranking minority members of the Committee on Ways and Means and the Committee on Finance and with the chairmen and ranking minority members of any other committee of the House and Senate which the chairmen of the Committee on Ways and Means and the Committee on Finance advise as having jurisdiction over legislation likely to be affected by such specific policy matters or negotiations.

USTR must keep each official adviser currently informed on matters affecting U.S. trade policy, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic laws or their administration which may be recommended to carry out any trade agreement. The chairmen of the Committee on Ways and Means and the Committee on Finance may also designate other members and staff members of their committees to have access to the information provided to official advisers.

Section 161, as amended, adds a new requirement that the USTR consult with the Committee on Ways and Means and Committee on Finance (when necessary in executive session) at least four times a year on the development, implementation, and administration of overall U.S. trade policy, including on the annual national trade policy agenda required by section 102 of this Act. Such consultations shall include, but are not limited to—

(1) the principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement;

(2) the implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and the resolution of trade disputes;

(3) actions taken, and proposed to be taken, under U.S. laws and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives; and

(4) important developments and issues in other areas of trade policy.

Finally, section 104 expands the statement required by section 162 of the Trade Act to accompany each trade agreement to include an explanation of how the agreement will enhance U.S. international trade competitiveness, expand export opportunities, establish equitable trade patterns, and further overall U.S. trade policy. The statement will also include a description of the consultations between the USTR and the private sector advisory committees under section 135 of the Trade Act, including the reasons for not accepting any particular advice or recommendations.

Reasons for change

The amendments to sections 161 and 162 reflect the increased importance and expanded scope of international trade policy issues. They also recognize the necessity for continual liaison and consultation between the Executive branch and the Congress on a bipartisan basis to develop and maintain a national consensus on U.S. trade policy generally, as well as on trade negotiation issues. The requirements recognize that the Congress, as well as the private sector, must be involved from an early stage and throughout the policy development and implementation process, not only to ensure the success of trade negotiations and Congressional approval of the results, but also Congressional support of national trade policy objectives and actions overall. The Committee expects the USTR to consult regularly with Members and the trade staff on trade negotiating objectives and the status of developments in the Uruguay Round of Multilateral Trade Negotiations and on any other trade negotiations as they proceed.

The Committee intends that the advisory committees reflect a general political balance that is representative but not necessarily equal in membership. Individual committee members should not be subjected to any political affiliation or allegiance test. In particular, the Committee expects the sector and functional advisory committees to be fully representative of the broad range of U.S. business, labor, and other interests involved in trade as required by the statute, and that members will be appointed on the basis of their policy and technical expertise, irrespective of their political affiliation. The Committee also expects government officials to seek the policy input and to utilize the technical expertise of the members to the fullest possible extent and to engage in a dialogue on issues in addition to providing information.

Section 105. Trade Competitiveness Impact Statements

Present law

No provision.

Explanation of provision

Section 105 of H.R. 3, as amended, requires the President, at least 60 days before a regulation, Executive order, or executive agreement takes effect that may have a significant impact on the ability of domestic industries to compete in domestic or international markets, to submit a statment to the House Committee on Ways and Means and the Senate Committee on Finance describing the impact the provisions are likely to have on U.S. imports and exports, the balance of payments, and on the ability of U.S. industries to compete. The requirement also applies if legislation proposed by the Executive branch would likely have a significant impact on competitiveness, if enacted.

The President may waive the requirement with respect to particular regulations, orders, or agreements if necessary to serve the national interest, to deal with an emergency situation, to comply with statutory deadlines, or to take actions mandated by law.

Reasons for change

The purpose of the amendment is to make certain that the Administration considers and takes into account in advance the overall impact that particular proposed legislation, Executive orders, or executive agreements might have on the U.S. trade and the balance-of-payments, and on the ability of domestic industries to compete. It is important, particularly given the huge U.S. balance of trade and payments deficits, that serious advance consideration be given to the impact that proposed Executive actions may have on these deficits and on the ability of U.S. business to compete successfully in both domestic and foreign markets.

The Committee intends that reviews and the preparation of statements will be conducted by, or at the direction of, the U.S. Trade Representative with the advice, input, and cooperation of other departments and agencies through the interagency Trade Policy Committee process. The waiver provision would be expected to be used where necessary to comply with statutory deadlines, such as import relief actions under section 201 of the Trade Act. Import relief decisions necessarily will require consideration of the competitive impact on domestic industries. The provision is also not intended to cover non-discretionary actions, such as those mandated by the antidumping or countervailing duty statutes.

Subtitle B—Trade Agreement Negotiating Authority, Enforcement of United States Rights Under Trade Agreements, and Response to Foreign Trade Practices

Chapter 1—Trade Agreement Negotiating Authority

Chapter 1 of H.R. 3, as amended, contains the objectives of the United States in multilateral and bilateral trade negotiations and the basic authorities for the President to enter into and to implement tariff and nontariff agreements, subject to certain limitations and consultation or implementation requirements. Chapter 1 also contains certain specific trade agreement authorities and reporting requirements.

Section 111. Overall and Principal Trade Negotiating Objectives of the United States

Present law

Sections 103 through 108 of the Trade Act of 1974 set forth overall trade negotiating objectives, as well as objectives for sector negotiations, international safeguard procedures, access to supplies, and bilateral agreements and agreements with developing countries. Section 121 specifies particular areas in which the President must seek revision of the General Agreement on Tariffs and Trade (GATT). The Trade and Tariff Act of 1984 amended the 1974 Act to add objectives for negotiations on services, high technology products, and foreign direct investment.

Explanation of provision

Section 111 of H.R. 3, as amended, sets forth overall and principal negotiating objectives, and certain specific agricultural objectives, for the United States to achieve under the tariff and nontariff trade agreement authorities granted under Chapter 1. Section 111 also sets forth U.S. policy with respect to the Uruguay Round of GATT Multilateral Trade Negotiations.

A. *Overall trade negotiatinq objectives.* The overall trade negotiating objectives of the United States are set forth under section 111(a) and apply to all sectors and activities and to all trade negotiations. These overall objectives are to obtain:

(1) more open, equitable, and reciprocal market access;

(2) elimination, reduction, and harmonization of policies or measures which impede or distort international commerce; and

(3) a more effective system of international trading disciplines and procedures.

B. *Principal trade negotiating objectives.* Section 111(b) sets forth the principal trade negotiating objectives of the United States as follows:

1. *Agriculture.* The principal negotiating objectives with respect to agriculture are to achieve more open and fair conditions of trade in agricultural commodities by (a) developing, strengthening, and clarifying rules to discipline restrictive or trade-distorting import and export practices; (b) eliminating and substantially reducing specific constraints to fair trade and more open market access; and (c) seeking agreements by major agricultural exporting countries to reduce excessive production during periods of oversupply.

These objectives for agriculture are to be achieved on an expedited basis to the maximum extent feasible, reflecting both the weakness of agricultural trade rules as compared to trade rules for other sectors, and the urgency of agricultural trade problems. In seeking expedited treatment of agricultural negotiations, however, it is not the intention to preclude, or to reduce the importance of, rapid progress in other negotiating areas. U.S. negotiators on agricultural issues should consult with the Committee on Ways and Means, as well as with the Senate Committee on Finance, at a very early stage of the GATT negotiations as they are developing the criteria that will be used to define what is a trade restriction, export subsidy, and domestic program that distorts agricultural trade.

Achieving discipline over trade in agriculture products, especially with respect to certain subsidy practices, is expected to receive very high priority in the Uruguay Round. It is important to develop agreed policies and practices that decrease the effects of farm support programs on world prices and that improve market access for U.S. exporters. In 1986, agricultural exports accounted for a significant percent of total U.S. exports. This percentage has been higher in the past and should improve in the future if fair trade in agriculture is achieved at last in the new Round of multilateral trade negotiations.

2. *Dispute settlement.* The principal negotiating objectives with respect to dispute settlement are to provide for more effective and expeditious dispute settlement mechanisms and procedures and to

ensure that such mechanisms in the GATT provide more effective and expeditious resolution of disputes and enable better enforcement of U.S. trade agreement rights.

3. *Unfair trade practices.* The principal negotiating objectives with respect to unfair trade practices are to improve GATT provisions and agreements to deter, and to provide greater discipline regarding, unfair trade practices and to make provisions applicable to agricultural trade consistent with provisions on industrial products. In particular, greater disciplines regarding, and measures to deter the persistent use of, newer forms of injurious unfair trade practices should be sought. These practices include subsidizing or dumping of downstream materials or components, resource subsidies, displacement of sales in third country markets through unfair practices, and export targeting.

4. *Trade in services.* The principal negotiating objectives with respect to services are to reduce or eliminate barriers to, or other distortions of, trade in services and to develop internationally-agreed rules and dispute settlement procedures to help ensure fair and equitable foreign market opportunities in services. These objectives are similar to those stated in section 104A of the Trade Act of 1974.

The Committee supports efforts undertaken by the Administration, in cooperation with the U.S. service sector, to develop a multilateral framework of rules and procedures for international trade in services. The Committee is concerned, however, that Federal statistical agencies still may be collecting insufficient data on the economic activity generated by the U.S. service sector, both domestically and in terms of its contribution to the current account balance. A more complete base of information would greatly assist the U.S. Trade Representative (USTR) in his efforts to negotiate sound, workable agreements on services trade. The Committee urges the Administration to place more emphasis on collecting such information by conducting a benchmark survey, such as the proposed BE-20 survey on unaffiliated service transactions, and by providing adequate resources to enhance other data collection efforts.

5. *Intellectual property.* The principal negotiating objectives with respect to intellectual property are to seek the enactment and effective enforcement by foreign countries of laws which recognize and adequately protect intellectual property, and to develop and strengthen international rules, dispute settlement provisions, and enforcement procedures against trade-distorting practices arising from inadequate and ineffective intellectual property rights national protection and enforcement. These objectives should be sought on a multilateral and bilateral basis, including in the GATT and under international intellectual property conventions.

The Committee believes that increased recognition and enforcement of intellectual property rights worldwide is vital to U.S. interests and urges the President to place a high priority on achieving the negotiating objectives set forth in this section. The Committee is deeply concerned that the international competitiveness of many U.S. firms and industries has been adversely affected by foreign countries' failure to adequately protect U.S. intellectual property rights. Many competitive U.S. industries in such areas as high technology, pharmaceuticals, and chemicals depend heavily on intellectual property protection in order to reap the financial gains of their heavy expenditures in research and development and technological innovation. Only through such protection will continued innovation be assured. An overall improvement in the recognition and enforcement of intellectual property rights worldwide is very much in U.S. interests.

6. *Foreign direct investment.* The principal negotiating objectives with respect to foreign direct investment are (a) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and (b) to develop internationally agreed rules and dispute settlement procedures to help ensure a free flow of foreign direct investment and reduce or eliminate the trade-distortive effects of certain trade-related investment measures. These objectives are similar to those included in section 104A of the Trade Act of 1974.

7. *Safeguards.* The principal negotiating objectives with respect to safeguards are to improve and expand rules and procedures covering import safeguard measures, and to ensure that such measures are transparent, temporary, degressive, and subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment by domestic industries.

8. *Improvement of the GATT and Multilateral Trade Negotiation agreements.* The principal negotiating objectives are to improve the operation and expand the coverage of the GATT and of the Agreements and Arrangements concluded in the Tokyo Round of GATT Multilateral Trade Negotiations, and to expand country participation, where appropriate. For example, the coverage of the Agreement on Government Procurement principles and procedures should be expanded to apply to additional purchasing entities and products in order to obtain further access to foreign government procurement markets.

9. *Specific barriers.* The principal negotiating objective with respect to specific barriers is to achieve maximum reduction, elimination, or harmonization of specific tariff and nontariff barriers on goods or services of export potential. While agreements should be sought to apply international principles and rules generically across-the-board to discipline particular types of practices, equal effort should be made in negotiations to obtain the liberalization of existing specific nontariff and tariff barriers.

Particular attention should be focused on measures identified in the annual report on foreign trade barriers required under section 181 of the Trade Act of 1974 and on disparities between U.S. and foreign tariff levels on particular products that impede U.S. bilateral access to particular foreign markets. Many examples have been brought to the Committee's attention of U.S. duty-free treatment or low duties on specific products or product sectors which permit foreign access to the U.S. market, whereas U.S. exporters face high duties imposed on those same products which severely restrict access to foreign markets.

A large number of the foreign trade barriers identified and analyzed in the annual report can be removed or alleviated effectively only through negotiations. However, barriers identified in that report should not necessarily have a higher negotiating priority than other measures that may be no less burdensome to U.S. commercial opportunities.

It is also not the intention that all barriers in that report become the subject of negotiations in which the United States would be expected to provide reciprocal concessions. For example, the United States should never have to make concessions for the removal of foreign barriers that infringe existing international rules. Such barriers may be addressed through unfair trade laws such as section 301 of the Trade Act of 1974.

10. *Worker rights.* The principal negotiating objectives with respect to worker rights are to promote respect for worker rights, to review the relationship of worker rights to the GATT with a view to ensuring that the benefits of the trading system are available to all workers, and to adopt as a principle of the GATT that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

11. *Developing countries.* The principal negotiating objective with respect to developing countries is to ensure that developing countries, commensurate with their attaining more advanced and competitive levels of economic development, assume full responsibility for achieving and maintaining an open international trading system by providing reciprocal benefits and assuming equivalent obligations with respect to their import and export practices.

12. *Access to high technology.* The principal negotiating objective with respect to high technology is to obtain the elimination or reduction of foreign barriers to, and foreign government acts, policies, or practices which limit equitable access by U.S. persons to foreign-developed technology. Among the measures specified as a possible focus of negotiation are barriers, acts, policies, or practices which have the effect of restricting U.S. participation in government-supported research and development projects; denying equitable U.S. access to government-held patents; requiring the approval or agreement of government entities, or imposing other forms of government intervention, as a condition for granting licenses to U.S. persons (with the exception of controls on the export of critical military technology); and otherwise denying equitable U.S. access to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners.

This objective is designed to ensure that U.S. persons have the same degree of access to basic research and technology developed in other countries as overseas competitors have to technology developed in this country. Many of foreign competitors—most notably Japan, but other countries as well—have derived much of their competitive strength through the adoption and commercial application of technology developed in the United States. Technology transfer, like trade, should be two-way and mutually beneficial. However, foreign barriers often interfere with the free flow of nonmilitary technology. Japan, for example, prohibits the licensing of government-held patents to American firms; denies U.S. participation in Japanese joint research and development ventures; and refuses U.S. researchers access to government-funded laboratories. Given the importance of technological innovation to the international competitiveness of the United States, the existing imbalance in access to technology must be dealt with in priority fashion.

13. *Current account surpluses.* The principal negotiating objective with respect to current account surpluses is to develop rules that impose greater responsibility on countries with large and persistent current account surpluses to undertake policy changes aimed at restoring current account equilibrium, including expedited implementation by such countries of their trade agreement obligations where feasible and appropriate.

The post-war Bretton Woods system—as embodied in the GATT and the Articles of Agreement of the International Monetary Fund—generally places the greatest burden of adjustment on countries experiencing a deficit in their balance of payments. Regardless of whatever international agreements may or may not exist, deficit countries generally *must* adjust their policies or face the prospect of default or the inability to pay for necessary imports. The Committee believes, however, that the absence of meaningful incentives or pressures for large and persistent surplus countries to adjust their policies to reduce their surpluses leaves an undesirable imbalance in the GATT system. As a result, the Committee believes it essential that U.S. negotiators address this issue in any new trade negotiations and strive for rules which impose a greater burden of adjustment on large surplus countries. At a very minimum, the Committee believes that countries with large and persistent surpluses should implement tariff cuts and any other trade agreement concessions more rapidly than other countries, to the extent that the agreements lend themselves to such accelerated implementation.

14. *Trade and monetary coordination.* The principal negotiating objective is to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions.

C. *Unfair trade practices and trade barriers affecting agricultural markets.* Section 111(c) sets forth certain findings of the Congress regarding agricultural export trade, and expresses the sense of the Congress that the USTR should immediately enter into negotiations and use all power and authority of his office to achieve the elimination of foreign barriers and unfair trade practices that affect U.S. agricultural exports. Subsection (c) lists certain barriers and practices on specific agricultural products of the European Community, Japan, Korea, Taiwan, India, Canada, and Argentina that warrant particular, but not exclusive, attention. In addition, the USTR should achieve the elimination of unfair trade practices and foreign barriers affecting U.S. exports of forest products and ensure full implementation of any agreement negotiated to eliminate unfair trade in such products.

D. *Policy with respect to the Uruguay Round of Multilateral Trade Negotiations.* Section 111(d) states that it is the policy of the United States to use the opportunity presented by the Uruguay Round of GATT Multilateral Trade Negotiations to enter into multilateral agreements that achieve, on a reciprocal and mutually advantageous basis, the purposes and objectives of Title I of this Act. The Uruguay Round, successfully launched in September 1986 and scheduled for completion in four years, presents a major opportunity to achieve many of the U.S. negotiating objectives, in particular through increasing U.S. export market opportunities, achieving fairer terms and conditions of international competition, strengthening provisions for international negotiation and dispute settlement, ensuring fuller responsibility by all countries for a fair international trading system, and improving the institutional structure and role of the GATT.

U.S. purposes and objectives are to be achieved, to the maximum extent feasible and appropriate, through multilateral trade agreements negotiated with the broadest possible participation of both developed and developing countries. However, bilateral agreements or so-called "plurilateral" agreements with certain "like-minded" countries willing to participate in an agreement on particular matters, should be negotiated to achieve the policy objectives if the use of such agreements would be more effective or appropriate or if multilateral agreements are not feasible.

In particular, the President is not precluded from seeking agreements outside of, or supplemental to, the Uruguay Round or the framework of the GATT, if it appears that results from the Uruguay Round are unduly delayed or if U.S. negotiating objectives can be obtained more effectively through bilateral or plurilateral agreements entered into outside or supplemental to the Uruguay Round or the GATT.

Reasons for Change

The listing of U.S. trade negotiating objectives under section 111 updates objectives previously stated in the Trade Act of 1974 for the Tokyo Round of GATT negotiations to reflect more current trade issues and conditions of trade that need to be addressed, particularly in the Uruguay Round of GATT negotiations. The particular ordering of the objectives does not indicate any priority ranking. Each of the objectives reflects concerns raised by the Committee, other Members of Congress, the Administration, or the private sector about the inadequacy of existing international rules and procedures in particular areas. Many of these objectives include foreign barriers identified in the annual report required by section 181 of the Trade Act.

The basic thrust of these objectives is to increase and improve international trading principles and disciplines on traditional unfair trade practices and newer forms of injurious government intervention in the marketplace, as well as to liberalize specific trade barriers and restrictions. The strengthening of mechanisms and procedures for dispute settlement and greater assumption of trade agreement obligations by countries is equally essential for restoring the credibility of the international trading system and institutions. Finally, the objectives highlight the important interrelationship between trade and monetary policies and institutions.

These objectives reflect the fact that U.S. businesses seeking to compete with foreign producers frequently encounter barriers and other distortions of trade that either are not covered at all within the framework of existing international rules and agreements or are covered inadequately or ineffectively. U.S. exporters confront high tariffs that, while clearly permitted under existing rules, restrict markets for highly competitive U.S. products. Nontariff barriers or other trade measures, such as subsidies, product standards, and procurement policies, also deter fair and open market opportunities. Effective trading rules do not exist on agriculture, services, intellectual property, and investment.

The objectives for negotiations are broadly stated with the clear intent that, to the maximum extent possible, they should be achieved through the Uruguay Round. However, the United States must also be prepared to negotiate outside the framework of that Round to the extent that satisfactory results or objectives cannot be achieved or U.S. interests could be better served through bilateral agreements or agreements with certain groups of interested countries.

Section 112. Trade Agreements Regarding Tariff Barriers

Present law

The President currently does not have authority to enter into tariff agreements and to *proclaim* the reduction, elimination, or continuation of U.S. rates of duty necessary or appropriate to implement such agreements. The most recent grant of basic tariff agreement and proclamation authority to the President under section 101 of the Trade Act of 1974 for the Tokyo Round of GATT Multilateral Trade Negotiations expired on January 2, 1980. Section 124 of the Trade Act further provided the President, for another two years, residual authority to negotiate tariff adjustments within narrow limits. As section 124 has not been renewed since its expiration on January 2, 1982, the President currently does not have basic tariff agreement proclamation authority.

Explanation of provision

Section 112 of H.R. 3, as amended, grants basic authority until January 3, 1993, for the President to enter into trade agreements with foreign countries and to proclaim the modification or continuation of any existing duty or duty-free (including excise) treatment, or additional duties, as he determines to be required or appropriate to carry out any such agreement.

However, as provided under section 112(b), the President may not proclaim a greater than 60 percent reduction of any duty if the U.S. International Trade Commission (ITC) advises or the USTR determines that any greater reduction on the particular article would have a probable significant adverse effect on the domestic industry. These determinations would be based on the ITC advice required under section 131 of the Trade Act of 1974, public hearings, advice from the private sector advisory committees, or other available information. Articles would be reserved from negotiations while they are subject to any import relief actions if inclusion would threaten the national security, as provided under section 127 of the Trade Act of 1974 (applied by section 115 of this Act).

Section 112(c) requires that any duty reduction on an article take effect within a maximum of 10 years after the effective date of the first reduction proclaimed on that article. Any reductions on articles subject to the maximum 60 percent limitation must be phased in over the 10-year period. The reductions on these articles may take effect annually in equal or unequal stages or may be subject to delayed implementation. Duty reductions on any article that the ITC advises or the USTR determines would have a probable adverse economic effect on the domestic industry shall be phased in over a period of up to 10 years (2 or more years). In order to simplify computations and the implementation of minimal reductions there may be rounding of staged rates of duty to the nearest whole number or by one-half of one percent ad valorem, whichever is less.

Reasons for change

Granting authority to the President to proclaim tariff changes, while requiring Congressional approval to implement changes in U.S. laws to modify other trade barriers or practices is consistent with historic practice since enactment of the Reciprocal Trade Agreements Act of 1934 (Public Law 73-316). Since 1934, the Congress periodically has delegated to the President authority to enter into and to proclaim reductions in tariffs under reciprocal trade agreements, subject to specific conditions and limitations. The authority granted by section 112 maximizes negotiating credibility and flexibility while ensuring an adequate opportunity for domestic industries to adjust to any loss of import protection through the requirements for staged reductions and by the reduction limit on highly import-sensitive articles. The Committee expects the USTR to take the ITC advice fully into account when offering and implementing tariff reductions in order to minimize any possibility of adverse impacts on domestic industries.

In determining whether to lower U.S. tariffs, among other factors USTR shall consider are: (1) whether tariffs on the article in GATT member countries significantly exceeds the U.S. tariff on the same article; (2) whether in past rounds on GATT negotiations, the U.S. tariff on the article was reduced disproportionately as compared with reductions of the tariffs on the same article in GATT member countries; and (3) the extent to which existing tariffs contain inversion between the rate of duty applicable to the component part and duty on the finished article.

Section 113. Trade Agreements Regarding Other Than Tariff Barriers

Present law

Section 102 of the Trade Act of 1974 authorizes the President to enter into trade agreements until January 3, 1988, to harmonize, reduce, or eliminate nontariff barriers or other trade-distorting measures. Such agreements may also provide for the prohibition of, or limitations on, the imposition of such barriers or other distortions. Section 102 is not applicable, however, to agreements which involve comprehensive changes in U.S. tariffs.

Section 101 of the Trade and Tariff Act of 1984 added authority under section 102(b) of the Trade Act for the President to enter into bilateral agreements (such as free trade areas) until January 3, 1988, to reduce or eliminate duties. A section 102 trade agreement providing for the reduction or elimination of U.S. rates of duty on a bilateral basis may be entered into with any country only if (1) the foreign country requests the negotiation; and (2) neither the House Committee on Ways and Means nor the Senate

Committee on Finance disapproves of the negotiations within 60 legislative days prior to the 90-day advance notice required under section 102(c) of entry into an agreement.

Before entering into a nontariff or bilateral trade agreement, the President must consult under section 102(c) with the Committee on Ways and Means and the Committee on Finance and with each other appropriate committee of jurisdiction on subject matters affected by the agreement, especially regarding issues of implementation.

Explanation of provision

Section 113(a) of H.R. 3, as amended, extends section 102 authority, in effect, by granting the President authority to enter into trade agreements providing for the harmonization, reduction, or elimination of foreign barriers to, or other distortions of, international trade or the prohibition of, or limitations on the imposition of, such barriers or other distortions.

Paragraph (2) of subsection (a) specifically authorizes the use of the authority under section 113(a) for a trade agreement to implement the International Convention on the Harmonized Commodity Description and Coding System nomenclature in the U.S. customs tariff.

Section 113(b) authorizes the President to enter into bilateral trade agreement authority providing for the reduction or elimination of any U.S. duty until January 3, 1993, except for negotiations underway as of January 1, 1987, (i.e., with Canada). Bilateral agreements may also provide for the harmonization, reduction, or elimination of nontariff barriers or other trade distortions. Negotiations under this authority are subject to the same procedural requirements as under present law for bilateral agreements. No trade benefits under a bilateral agreement may be extended to a third country.

Section 113(c) requires the President, before he enters into any nontariff or bilateral trade agreement under section 113, to consult with the Committee on Ways and Means and the Committee on Finance and with each other committee having jurisdiction concerning the nature of the agreement and how and to what extent it achieves the purposes, policies, and objectives of Title I, as well as on all matters relating to implementation of the agreement.

The USTR must review, within one year after enactment of this Act, U.S. bilateral trade relationships and identify those foreign countries that have the best potential for bilateral free trade area relationships with the United States. The USTR must consult with the Committee on Ways and Means and the Committee on Finance on the results of the review.

No provision of this Act shall apply to the foreign party to a bilateral free trade area agreement with the United States that entered into force before January 1, 1987, in any case in which there is an inconsistency between such provision and the agreement.

The United States is currently a party to one bilateral free trade area agreement, the Agreement on the Establishment of a Free Trade Area between the United States and Israel approved and implemented on June 11, 1985. The Agreement is a binding international obligation and provides reciprocal benefits to the two parties primarily through the mutual elimination of all tariff barriers to bilateral trade. The provision in section 113(b) will assure Israel that the principle of bilateral reciprocity and mutual advantage under the Agreement is maintained, by not applying any provision of this Act to Israel if there is an inconsistency between the particular provision and the Agreement.

Reasons for change

Authority for the President to enter into trade agreements on nontariff barriers or into free trade area or other bilateral agreements utilizing expedited Congressional implementing procedures expires on January 3, 1988. Extension of trade agreement authority under those procedures to reduce, eliminate, limit, or prohibit nontariff barriers or other trade-distorting measures is absolutely essential if the United States is to pursue most of the negotiating objectives and to achieve the overall policies and purposes of this Act. Most of the foreign trade barriers and unfair trade practices that impede the ability of U.S. businesses to compete in domestic and foreign markets on an open, fair, and reciprocal basis can be addressed most effectively through international negotiations. Past experience has demonstrated that some advance reasonable assurance to foreign countries that U.S. implementation of negotiated results will at least be considered by the Congress on an expedited basis is necessary to maximize U.S. negotiating credibility and effectiveness.

Section 114. Implementation of Trade Agreements

Present law

In contrast to traditional tariff proclamation authority, a nontariff barrier agreement negotiated under section 102 authority cannot enter into force for the United States and become binding as a matter of domestic law unless the President adheres to certain requirements for presentation to the Congress and implementing legislation approving the agreement and any changes in U.S. law is enacted into law. Special notice and expedited "fast track" no amendment procedures under section 102(d)–(f) and sections 151–154 of the Trade Act of 1974 apply for Congressional consideration and approval of nontariff and bilateral trade agreements. No nontariff trade agreement provisions may enter into force for the United States and the President cannot proclaim any duty modifications under bilateral agreements entered into under section 102 unless there is compliance with these requirements.

Section 102(d)–(f) and sections 151–154 prescribe the following advance notice and "fast track" procedures for Congressional approval of implementing legislation for nontariff or bilateral trade agreements entered into under section 102:

(1) The President must notify the Congress of his intention to enter into the agreement 90 days before doing so, and thereafter promptly publish his intention in the Federal Register.

(2) After entering into the agreement, the President must submit a copy of the agreement to the Congress, together with a draft implementing bill, a statement of any administrative actions proposed to implement the agreement, an explanation of how the bill and

statement change or affect existing law, and a statement of reasons the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate. An implementing bill must contain provisions approving the agreement and the statement of administrative action, and any amendments to current law or new authority required or appropriate to implement the agreement.

(3) The implementing bill is introduced in both Houses of Congress on the day it is submitted by the President. This bill is referred to the committee or committees of jurisdiction. The committees have 45 legislative days in which to report the bill; a committee is discharged automatically from further consideration after that period.

(4) Each House votes on the bill within 15 legislative days after the measure has been received from the committee or committees. A motion in the House to proceed to consideration of the implementing bill is privileged and not debatable. Amendments are not in order, and debate is limited to not more than 20 hours.

Although statutory, the procedures in paragraphs (2), (3), and (4) were enacted as an exercise of the rulemaking powers of each House of Congress, and are decreed to be a part of the rules of the House and of the Senate. The procedures may be changed in the same manner as any other rules.

In order to ensure that a foreign country which benefits from a section 102 trade agreement is also subject to the obligations, the President may recommend to Congress in the implementing bill and statement of administrative action that the benefits and obligations apply solely to the parties to the agreement, if such application is consistent with the terms of the agreement.

Explanation of provision

Section 114 sets forth the procedural requirements for implementing any nontariff or bilateral trade agreement entered into under section 113. These implementing procedures apply under present law with respect to agreements entered into under section 102 of the Trade Act.

Section 114(b) applies the 90-day advance notice and statement requirements under section 102(e) to any trade agreement entered into under section 113(a) or (b). The statement of the President to the Congress which must accompany any trade agreement and draft implementing bill, in addition to the matters covered under present law, must state that the agreement achieves applicable purposes, policies, and objectives of Title I, the reasons as to how and to what extent the agreement achieves these objectives, and why and to what extent the agreement does not achieve other such objectives.

The President must also include in his accompanying statement a description of his efforts to obtain international exchange rate equilibrium and any effects the agreement may have regarding increased international monetary stability.

Section 114(c) requires the President to recommend that trade agreement benefits and obligations apply solely to signatory parties to the agreement, if such treatment is appropriate and consistent with the terms of the agreement and with U.S. international obligations.

Section 114(d) extends the "fast-track" procedures under sections 151 through 154 for Congressional approval of nontariff barrier agreements until January 3, 1991. The authority would be extended automatically for an additional 2 years, until January 3, 1993, if, by July 15, 1990, (1) the USTR consults with, and submits a report to, the House Committee on Ways and Means and the Senate Committee on Finance requesting an extension describing the progress that has been made in negotiations to achieve the purposes, policies, and objectives of Title I that justifies an extension and stating the need for an extension to complete the Uruguay Round or other negotiations; and (2) neither Committee disapproves the extension before January 4, 1991. The same "fast track" procedures would apply to bilateral trade agreements until January 3, 1993.

Reasons for change

Section 114 limits the initial extension of the "fast track" procedures for implementing nontariff agreements to four years in order to create the maximum incentive and momentum to complete the Uruguay Round of Multilateral Trade Negotiations within the four-year target agreed to by Ministers in September 1986, and to achieve agreements at the earliest possible date. The reporting requirement is also intended to provide negotiating momentum as well as accountability to the Congress for progress made. While some issue areas are very complex and considerable time may be needed to develop agreement, previous Rounds have not achieved final results until expiration of the U.S. implementing authority was imminent.

The President may seek extension of the nontariff agreement authority for an additional two years if justified at the time by progress made in the negotiations. However, the Committee expects a request for an extension to be made only if the Uruguay Round is close to completion or if U.S. interests would be better served by alternative negotiations because of insufficient progress or prospects for results in the Round.

The purpose of the approval process for nontariff barrier and bilateral tariff agreements is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which generally involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that Congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance, while at the same time ensuring expeditious action on the final agreement and implementing bill once submitted. Congressional and private sector involvement throughout the course of trade negotiations, in conjunction with the assurance of expedited consideration of the negotiated results, represent a careful balance between the President's authority to conduct foreign affairs and to negotiate agreements and the Congress' constitutional authority to regulate foreign commerce. This process was used successfully in approving the Tokyo Round trade agreements and implementing changes in U.S. law under the Trade Agreements Act of 1979.

The amendments also establish stronger linkages between the exercise of the trade agreement authorities and achievement of U.S. purposes and policies under section 101 and the negotiating objectives under section 111 of this Act, as well as greater accountability to the Congress in the achievement of these policies and objectives. The purpose of the stronger conditional most-favored-nation requirement is to ensure that trade agreement benefits provided by the United States are reciprocated by benefits from foreign participants, to the extent consistent with the purposes of the agreement and U.S. international obligations.

Although the U.S. dollar has depreciated considerably since the September 22, 1985, announcement by the Group of Five (G-5) Ministers, the Committee believes that the issue of exchange rate stability merits continued attention. The current exchange rate of the dollar clearly is preferable from a competitiveness point of view to the rates which prevailed throughout much of 1985 and the years previous. However, given the crucial role played by the exchange rate in U.S. international competitiveness, the Committee believes that Congressional consideration of any trade agreements should require an accounting of the President's pursuit of an international exchange rate equilibrium to provide stability and certainty to U.S. exporters and importers and of any effect of the agreement on international monetary stability. In saying this, the Committee recognizes the primary jurisdiction of the Committee on Banking, Finance and Urban Affairs in this area.

Section 115. Amendments to the Trade Act of 1974

Present law

The Trade Act of 1974 contains various provisions pertaining to tariff and nontariff trade agreement authorities under sections 101 and 102 of that Act:

—Section 125 authorizes the termination or withdrawal of trade agreement benefits or obligations under certain conditions.

—Section 126(a) requires nondiscriminatory (MFN) application of import restrictions or duty-free treatment under trade agreements, except as otherwise provided by law.

—Section 127 prohibits the reduction or elimination of import restrictions on any article that would threaten to impair the national security, and requires the reservation of articles from negotiations while they are subject to import relief or national security actions.

In addition, sections 131-134 of the Trade Act of 1974 set forth procedural requirements that must be met prior to entering into trade agreements under sections 101 or 102:

—Section 131 requires the ITC to advise the President as to the probable economic effects of possible modifications of any tariff under a proposed trade agreement on domestic industries producing like or directly competitive articles and on consumers; the ITC must also make investigations and reports requested by the President regarding possible agreements on nontariff barriers.

- —Section 132 requires information and advice from Executive branch agencies prior to entry into trade agreements.
- —Section 133 requires the President to hold public hearings on any proposed trade agreement.
- —Section 134 requires that the President receive a summary of the hearing and the ITC advice prior to making any trade negotiating offers to foreign countries on U.S. duties, import restrictions, or other trade barriers.

Explanation of provision

Section 115(b) of H.R. 3, as amended, applies sections 125, 126(a), and 127 of the Trade Act of 1974 to any trade agreement entered into or any proclamation or Executive order issued under the trade agreement authorities of section 112 or section 113 of this Act.

Section 115 also applies sections 131, 132, 133, and 134 prenegotiation procedures to all trade agreements proposed under sections 112 or 113 of this Act. Other amendments to section 131 expand substantially the scope of ITC advice to include the probable economic effects of any trade barrier modification on any domestic interest that might be affected, including services, intellectual property, and investment. The scope of ITC investigations and reports that the President may request from the ITC is also expanded by section 115 to assist him in developing trade policies and priorities, including priorities for actions to improve opportunities in foreign markets, and to determine the impact of possible modifications in U.S. trade barriers on the competitiveness of domestic industries or sectors. The authority of the President has been delegated to the USTR by Executive order.

Section 115 requires the President to seek the advice under section 132 through the existing interagency structure chaired by the USTR prior to entering into a trade agreement. Section 115 also amends section 133 to expand the scope of public hearings to any matter relevant to a proposed trade agreement and to trade policy development and priorities, when appropriate. As amended, section 134 continues the provisions for the President to receive advice from the ITC prior to making offers in trade negotiations, and expands the scope of the requirement to include information and advice about services, foreign direct investment, and intellectual property.

Reasons for change

The scope of advice and information required by present law for trade negotiating purposes reflects the fact that until the Tokyo Round, trade negotiations concentrated on tariff reductions. While that advice is still necessary, the amendments address the need for full information and advice to the President on the effects on domestic industries and other U.S. economic interests of any proposed changes in the entire range of nontariff and other barriers as well as the need for such input on trade policy developments generally. The amendments reflect the complexity of issues and the broad range of potential effects involved today in trade negotiations and overall national trade policy.

Section 116. Compensation Authority

Present law

Section 123 of the Trade Act of 1974 authorizes the President to enter into trade agreements with foreign countries for the purpose of granting new concessions as compensation only for section 203 import relief actions, in order to maintain the general level of reciprocal and mutually advantageous concessions. The President may proclaim duty reductions of up to 30 percent from existing levels as he determines necessary or appropriate to carry out the agreement. The President must consider whether the country concerned has violated commitments of benefit to the U.S. and the violation has not been adequately offset.

Explanation of provision

Section 116 of H.R. 3, as amended, expands the authority under section 123 of the Trade Act for the President to enter into and proclaim compensation agreements to cover import restrictions imposed under section 301 of the Trade Act or increases in or the imposition of duties or other import restrictions by legislation enacted after the date of enactment of this Act or by judicial or administrative tariff reclassification. The authority may be used only if necessary or appropriate to meet U.S. international obligations. The same limitations on duty reductions and requirements for staging apply as for the basic tariff agreement authority under section 112.

Reasons for change

The amendment recognizes that existing compensation authority is inadequate to meet the various circumstances in which it may be necessary or appropriate for the United States to offer compensation to particular foreign countries in order to meet obligations under the GATT, as an alternative to possible foreign retaliation. The primary reason for authorizing the President to grant tariff compensation is to avoid harmful retaliation against U.S. interests by foreign governments. Under the rules of the GATT and other trade agreements to which the United States is a party, there are a number of circumstances in which a foreign government will have the right to retaliate against the United States, unless the United States is prepared to provide acceptable compensation. Those circumstances include escape clause restrictions, increases in duty above the level of U.S. international commitments or "bindings," certain tariff reclassifications (by statute or customs or court action), and instances where U.S. laws or Presidential actions violate U.S. obligations under trade agreements. In such circumstances, foreign governments are likely to choose sensitive U.S. exports for retaliatory action.

The main advantage of compensation authority is that the United States may be able to avoid such harmful retaliation against sensitive U.S. industries by offering tariff concessions on products with little or no import sensitivity. This authority will also enable the United States to honor its international obligations, and thus more easily hold other countries to their obligation to provide compensation in comparable circumstances.

The compensation authority conferred in section 123, as amended, could not be used, however, merely to blunt an unwarranted threat of retaliation by a country having no legitimate claim under an international agreement. Furthermore, even to the extent that a foreign country has a legitimate claim for compensation, it may prove preferable to accept retaliation if it appears that this would be less damaging to U.S. interests on balance than the compensation demanded. Such judgments must be made on a case-by-case basis.

Section 117. Tariff Agreements With Canada

Present law

Under section 102 of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984, the President has the authority to enter into a bilateral trade agreement with any country to reduce or eliminate tariffs, but such an agreement is subject to Congressional approval under the fast-track implementation procedures set forth in sections 102 and 151-154 of the Trade Act. The authority to enter into such an agreement expires on January 3, 1988.

Explanation of provision

Section 117 of H.R. 3, as amended, would add a section 129 to the Trade Act of 1974 authorizing the President to enter into an agreement with Canada to reduce or eliminate the duties on a specific list of tariff items. The President would have the authority to proclaim the changes in duties on these products without seeking the approval of Congress. However, he is authorized to exercise this authority only to the extent that tariff concessions of approximately equivalent value are granted by the Government of Canada in exchange for the reductions authorized under this section.

The following products would be covered under the scope of this negotiating authority: frozen cranberries; dialysis cyclers; tea-packaging paper; dried fababeans; cat litter composed of paper or gypsum; mechanics' tool boxes; medical tubing; synthetic fireplace logs; certain spirits; miners safety lamps, components, and battery chargers; and computerized paper cutter control retrofit units. The President's authority to negotiate on these products is limited to the specified tariff items accompanying each article description in section 117.

Reasons for change

On December 10, 1985, the President notified the House Committee on Ways and Means and the Senate Committee on Finance of his intention to enter into a comprehensive bilateral trade negotiation with Canada under the authority of section 102. Neither Committee disapproved such negotiations during the 60 legislative-day period provided in section 102, and comprehensive talks began earlier this year. Although it is expected that these talks may be concluded by the end of the year, there is some question as to whether such an ambitious schedule can be met.

In order to facilitate such negotiations and to create some momentum toward a comprehensive agreement, section 117 authorizes the President to proclaim the reduction or elimination of duties on a finite list of articles which are of importance to the Canadian Government in exchange for tariff concessions of equivalent value on U.S. exports to Canada. If an agreement is reached, such tariff reductions can be implemented without further Congressional approval at any time within the 5-year period for which the President has been granted such authority.

The Committee is hopeful that such an interim agreement will not only liberalize and enhance bilateral trade in the included products but will also demonstrate to both Governments the benefits of improved access to each other's markets and perhaps result in more significant dismantling of trade barriers in the comprehensive talks.

Section 118. Implementation of United States-EC Agreement on Citrus and Pasta

Present law

No provision.

Explanation of provision

Section 118 of H.R. 3, as amended, provides for the implementation of tariff reductions agreed to by the United States in the Agreement between the European Economic Community (EC) and the United States, concluded February 24, 1987, with respect to citrus and pasta. The tariff reductions specified apply to certain anchovies, cheeses, satsuma oranges, olives, capers, paprika, cider, and olive oil. Section 118 authorizes the President to proclaim the tariff reductions on an appropriate date to carry out the Agreement, and to modify or terminate such reductions at any time by proclamation.

Reasons for change

Section 118 grants authority to implement U.S. obligations under a bilateral agreement with the European Community negotiated in August 1986. That agreement has four main elements: (1) removal of the U.S. and EC retaliatory measures that were imposed in the context of the citrus preference dispute; (2) reductions in EC tariffs on oranges, lemons, grapefruit, and frozen orange juice concentrate for specified annual quantities of those products, in settlement of U.S. claims regarding the adverse effects on U.S. exports of EC tariff preferences granted to certain Mediterranean countries on citrus products; (3) an agreement to negotiate an expeditious settlement of U.S. claims regarding EC export restitutions on pasta; and (4) an exchange of trade-liberalizing concessions in which the United States will increase the cheese quota for the EC and implement the duty reductions specified in these provisions in return for EC tariff reductions on almonds and certain peanuts.

On an interim basis, the United States (acting under previously delegated authority) and the EC have implemented all portions of this agreement except the U.S. tariff concessions that would be implemented under section 118 authority and the EC tariff reductions on lemons, grapefruit, peanuts and almonds, and the settlement of the pasta dispute. As soon as the United States implements the tariff concessions, the EC will implement its tariff reductions.

The Committee believes that the value of the EC concessions the United States will obtain fully justifies implementation of the tariff reductions by the United States. At the same time, however, the Committee urges the President to conclude rapidly a settlement on fair terms of the U.S. pasta industry's complaint regarding illegal EC export subsidies on pasta, and to address this issue on its own merits without further linkage to the citrus dispute or any other section 301 complaint. The Committee also intends that the President not make U.S. duty reductions effective any sooner than the EC implements its tariff reductions. Finally, the concessions on olives have been limited to olives for sale as green olives, and the Committee expects the U.S. Customs Service to ensure that there is no circumvention of the limited scope of this concession by the importation of green olives which then turn black prior to sale in the United States.

Section 119. Reports on Negotiations To Eliminate Wine Trade Barriers

Present law

Title IX of the Trade and Tariff Act of 1984 required the USTR to designate foreign countries that are a potential significant market for U.S. wine and maintain trade barriers to U.S. wine exports. The President was required to direct the USTR to enter into consultations with each country to seek a reduction or elimination of those barriers and to submit reports to the Congress within 12 months describing each country's barriers, action taken or reasons for not taking action to eliminate or reduce them, and any recommendations for legislation or other necessary and appropriate action.

Explanation of provision

Section 119 of H.R. 3, as amended, requires an updating of each of the country reports required under Title IX to be submitted by the President to the Committee on Ways and Means and the Committee on Finance within 13 months after the date of enactment of this Act. Each report shall describe the trade barriers to U.S. wine exports on which the USTR has carried out consultations since the previous report was submitted, the status of those consultations, information and explanations of action taken or not taken, and recommendations based on developments since the previous reports.

Reasons for change

The reports will provide a current accounting to the Congress of progress made or not made in achieving the reduction or elimination of tariff and nontariff barriers in each of the major potential foreign markets for U.S. wine exports, as mandated by the 1984 Act.

Chapter 2—Enforcement of United States Rights Under Trade Agreements and Response to Foreign Trade Practices

Chapter 1 of Title III of the Trade Act of 1974 (commonly known as "section 301"), as amended by the Trade Agreements Act of 1979 and the Trade and Tariff Act of 1984, is the basic statutory authority for the President to enforce U.S. rights under trade agreements and to obtain the elimination of foreign government unfair trade practices which burden or restrict U.S. commerce. This statute is not designed or intended to protect or provide relief to domestic industries from injurious import competition. Rather, section 301 is a negotiating tool whose primary purpose is to ensure adherence by countries to their trade agreement obligations of benefit to the United States and to obtain the elimination of other foreign unjustifiable, unreasonable, or discriminatory practices which burden or restrict U.S. commerce. The President may impose retaliatory import measures or take any other actions under his constitutional powers as negotiating leverage to obtain a satisfactory solution or as a last resort as "self-compensation" to enforce U.S. rights.

The provisions include investigatory procedures administered by the U.S. Trade Representative (USTR) which parallel the consultation and dispute settlement procedures of the General Agreement on Tariffs and Trade (GATT), to the extent they are applicable. Section 301 constitutes the counterpart authority under domestic law to enforce U.S. legal rights under international agreements, including the GATT. However, section 301 is a broad, inclusive statute which provides independent authority under domestic law applicable to foreign measures which meet the statutory criteria, irrespective of whether the foreign country is a signatory to, or its practices are covered by, the GATT or other international agreements.

Section 301 is derived from section 252 of the Trade Expansion Act of 1962, which was originally intended to deal with foreign import restrictions and export subsidies, particularly on agricultural commodities. Through successive amendments in 1974, 1979, and 1984, the authority has been expanded to cover all measures covered by trade agreements and all forms of unfair practices by foreign governments which burden or restrict U.S. commerce, including those affecting services trade, investment flows, and intellectual property rights, as well as goods.

Certain standards must be met for alleged unfair foreign trade practices to be actionable under section 301 authority. First, there must be an existing "act, policy, or practice of a foreign country or instrumentality," i.e., the existing practice must be undertaken by a foreign government. Private practices, with no direct or indirect government involvement, are not actionable under section 301.

Second, the offensive measure must violate or otherwise deny U.S. benefits under a trade agreement, or be unjustifiable, unreasonable, or discriminatory and a burden or restriction on U.S. commerce, as defined under section 301(e):

The term *"unjustifiable"* means any act, policy, or practice which is "in violation of, or inconsistent with, the international legal rights of the United States."

The term *"unreasonable"* means any act, policy, or practice which is not necessarily in violation of, or inconsistent with, U.S. international legal rights, but is otherwise "unfair and inequitable." In determining what is unreasonable under this definition, the USTR examines how the offensive practice compares to existing U.S practice and international norms.

The term *"discriminatory"* includes, where appropriate, any act, policy, or practice which "denies national or mostfavored-nation treatment" to U.S. goods, services, or investment.

Third, where the foreign government practice is deemed "unjustifiable, unreasonable, or discriminatory," the practice must also "burden or restrict United States commerce" in order to be actionable under section 301. This "injury" requirement is liberally interpreted and varies from case to case. For example, lost sales due to foreign import restrictions can be sufficient to demonstrate burden even though the U.S. industry's general health is good. In other cases, burden may be demonstrated by decreased profits or other indications of injury. There must also be a causal link between the foreign government practice and the burden or restriction. In cases involving an alleged denial of rights under a trade agreement, section 301 does not require the demonstration of a burden or restriction to commerce. However, depending on the provisions of the trade agreement concerned, some form of injury or burden may have to be demonstrated in order to find that the agreement has been violated.

The amendments made by sections 121 through 128 of this Act address primarily three major issues raised by Members of Congress and by private sector interests as areas where changes in section 301 provisions are warranted: (1) the need for greater certainty of Presidential action against unfair foreign trade practices; (2) the need for more timely decisions and actions in meritorious cases; and (3) the need to address specifically additional forms of unfair trade practices through section 301 authority. At the same time, the Committee recognizes that the strength of section 301 derives from the flexibility that it provides in fashioning the appropriate response to each case. The Committee intends to preserve that flexibility, while seeking more vigorous and timely use of this broad authority to ensure enforcement of trade agreement obligations and the elimination of foreign unfair trade practices which adversely impact U.S. trade interests.

Section 121. Action Required in Response to Determinations

Section 121 of H.R. 3, as amended, amends section 301 (1) to transfer authorities from the President to the USTR; (2) to make action more certain against more egregious unfair trade practices, and to clarify the scope of authority; (3) to define additional types of foreign practices as actionable under section 301; and (4) to impose tighter and more certain time limits for determinations and action.

Transfer of Authority

Present law

The USTR receives and reviews petitions filed under section 302 of the Trade Act of 1974, determines whether to initiate investigations, conducts the factual investigation (based on a petition or self-initiation), represents the United States in consultations and dispute settlement proceedings with foreign governments, and recommends to the President what action, if any, he should take under section 301. The President determines whether section 301 action is appropriate and, if so, decides and implements the action to be taken. The President may also initiate section 301 actions on his own motion, with or without USTR investigations.

Explanation of provision

Chapter 2 of H.R. 3, as amended, transfers the authority from the President to the USTR to determine whether a particular act, policy, or practice of a foreign country is actionable under section 301 and whether it denies U.S. rights under a trade agreement, violates or is inconsistent with a trade agreement, or is unjustifiable, unreasonable, or discriminatory and a burden or restriction on U.S. commerce. Chapter 2 also transfers the authority from the President to the USTR, subject to the specific direction, if any, of the President to decide whether action is appropriate and to decide and implement any action in all section 301 cases. The President would not retain separate authority to take section 301 actions on his own motion, but he could direct the USTR to take action or to self-initiate an investigation.

Reasons for change

The Committee believes that a transfer of section 301 authority and responsibility from the President to the USTR will strengthen the negotiating authority and credibility of the USTR and provide greater certainty that action will, in fact, be taken to protect and enforce legitimate U.S. trade interests. The transfer is also consistent with other provisions of H.R. 3, as amended, which strengthen the statutory authorities and role of the USTR in the interagency process as having lead responsibility for U.S. international trade policy development and coordination.

The intention of the Committee is that the USTR obtain information and advice through the Interagency Trade Policy Committee process before making his decision on section 301 action. The decision of the USTR would take into account the views of other agencies. During this process the USTR could consult with the President as he deemed appropriate in the particular case, or the President could endorse the position of the USTR in order to enhance the stature of his decision. However, the responsibility and authority for the decision would reside with the USTR.

The Committee recognizes that the USTR serves as the representative of the President and in certain limited circumstances broader U.S. national interests may be involved in section 301 decisions affecting foreign governments that may override strictly trade policy concerns. The Committee expects such instances would be rare. The Committee expects that the interagency committee advisory process prior to the decision by the USTR will virtually eliminate the instances in which any specific direction from the President would be appropriate.

However, the Committee does recognize that if there is a policy issue of major magnitude, the President could direct the USTR to take a different course of action. This role for the President does not change the statute's requirement for mandatory action and does not expand the national economic interest waiver authority granted to the USTR. The phrase "subject to the direction, if any, of the President" means that the President *could*, if he chooses, give such direction. It does not require case-by-case direction by the President as a precondition for the USTR to use his authority or to implement final action. It is expected that the President could provide broad policy direction or endorse the USTR decision, but that details of particular actions would remain with the USTR, including modification and termination of prior retaliatory action.

In effect, any Cabinet officer raising a major policy disagreement with the USTR's decision would bear the burden of persuading the President to direct the USTR to take a different course of action.

Mandatory/Discretionary Action

Present law

Under section 301(a), *if the President determines that action by the United States is appropriate:*

> (1) to enforce U.S. rights under any trade agreement; or
>
> (2) to respond to any act, policy, or practice of a foreign country that (a) is inconsistent with the provisions of, or otherwise denies U.S. benefits under, any trade agreement, or (b) is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce, the President *shall take all appropriate and feasible action* within his power to enforce such rights or to obtain the elimination of the act, policy, or practice. Under section 301(b), the President *may* (1) suspend, withdraw, or not apply trade agreement concessions; and (2) impose duties or other import restrictions on the goods of, and fees or restrictions on the services of, the foreign country for such time as he deems appropriate. Under section 301(c), he also *may* restrict the terms and conditions, or deny the issuance, of any prospective service sector access authorization (e.g., license) that permits a foreign supplier of particular services access to the U.S. market.

Section 301 action may be taken on a nondiscriminatory (MFN) basis or solely against the foreign country involved. The action may apply to any goods or sector, irrespective of whether the particular goods or sector were involved in the particular foreign act, policy, or practice.

Explanation of provision

Section 121 amends section 301(a)(1) to require *mandatory action* by the USTR, subject to the specific direction, if any, of the President, to enforce U.S. rights and to obtain the elimination of certain foreign unfair trade practices. Section 301(a)(1) would apply if the USTR determines under section 304(a) that U.S. rights under an international agreement are being denied, or if an act, policy, or practice of a foreign government either (1) violates or is inconsistent with or otherwise denies U.S. benefits under a trade agreement, or (2) is otherwise "unjustifiable" and burdens or restricts U.S. commerce. In such cases, the USTR, subject to the specific direction, if any, of the President, would be required to take retaliatory action under section 301(b) and/or (c), and to take all other appropriate and feasible action within his power, to enforce U.S. rights or to obtain the elimination of the act, policy, or practice. The amount of retaliatory action must be equivalent in value to the burden or restriction imposed by the foreign unfair practice on U.S. goods or services.

However, as provided under subparagraph (B), *retaliatory action would not be required* under the following circumstances:

(1) If the GATT Contracting Parties determine or a GATT panel reports that U.S. trade agreement rights are not being denied or the act, policy, or practice is not a violation of, or inconsistent with, U.S. rights or does not deny, nullify or impair trade agreement benefits; or

(2) If the USTR finds that—

(a) the foreign country is taking satisfactory measures to grant U.S. trade agreement rights;

(b) the foreign government has agreed to eliminate or phase out the act, policy, or practice, or has agreed to an imminent solution to the burden or restriction on U.S. commerce that is satisfactory;

(c) it is impossible for the foreign country to achieve the results under (a) or (b), but the country agrees to provide the United States compensatory trade benefits that are satisfactory; or

(d) such action is not in the national economic interest of the United States because it would result in U.S. economic interests being more adversely affected if action were taken than if not, and he reports the reasons to the Congress.

The USTR is required under subparagraph (E) to report promptly in writing to the Congress with respect to each action taken or the reason for taking no action under section 301(a)(1) to enforce U.S. rights or to eliminate the foreign practice.

As provided under section 301(a)(2) as amended, the USTR would have *discretionary authority* as under present law to act, if he determines action is appropriate, in cases involving *"unreasonable"* or *"discriminatory" practices* which do not violate U.S. international legal rights. If the USTR determines under section 304(a) that a foreign act, policy, or practice is unreasonable or discriminatory and burdens or restricts U.S. commerce, the USTR, if he determines that action by the United States is appropriate and subject to the specific direction of the President, shall take all appropriate and feasible action within his power to obtain the elimination of the act, policy, or practice. Such action may include retaliatory import restrictions imposed on goods or services under section 301(b) or (c), or the foreign government may enter into a settlement agreement as under section 301(a)(1) in lieu of U.S. retaliation.

Section 121 also amends section 301(b) by adding specific authority to withdraw or not to proclaim beneficiary status to a developing country or to deny duty-free treatment to any eligible product or products of a beneficiary developing country under the Generalized System of Preferences (GSP) program of Title V of the Trade Act of 1974 as a form of section 301 action.

In all section 301 cases the form of any retaliatory action is discretionary. However, section 301(b) as amended requires preference to be given to tariff increases or to the removal of tariff preferences over quantitative restrictions as the form of retaliation. If import quotas are imposed, consideration must be given to a timetable for transferring them to an equivalent tariff. Section 301(a)(5) as amended requires the USTR to give first consideration to retaliatory action on the same goods or sector involved in the foreign act, policy, or practice and to seek in the first instance any compensatory benefits from the foreign country on the same goods or sector.

Section 301(b) as amended requires the USTR, before determining to take section 301 action which would restrict imports, to take into account the likely impact such action would have on U.S. agricultural exports. The notice required under section 301(d) of the determination must include a statement regarding the likely impact, if any, of an import-restricting action on U.S. agricultural exports.

Reasons for change

The primary purpose of the amendments made by section 121 is to provide greater certainty of response by the United States to enforce U.S. rights under trade agreements and to remove or redress foreign practices recognized as illegal or otherwise unjustifiable. At the same time, the Committee recognizes that retaliation in the form of import restrictions is not the preferred outcome of a dispute and should not be required if the foreign country has agreed to eliminate or phase-out the practice in a satisfactory manner or, while preserving the practice, has removed or otherwise solved the burdensome or restrictive effect on U.S. commerce. Alternatively, the foreign country may, if it cannot remove or alleviate the impact of the practice itself, offer satisfactory compensation in the form of new trade opportunities which, consistent with GATT practice, would be preferable to imposing restrictive retaliatory measures.

Any waiver of retaliation in the national economic interest involves a weighing of the economic costs and benefits and a determination that retaliation would cause greater harm to the national economy than not taking retaliatory action against the foreign practice. The likely impact, if any, of any retaliatory action on agricultural exports should be taken into account in this consideration. Exercise of the national economic interest waiver authority is intended to be an exceptional, not routine, procedure. It should be applied only in cases where there is a clear demonstration of greater U.S. adverse impact to overall economic interests than if the foreign practice remains in place. The report to the Congress should explain in detail the reasons for exercising the waiver in any case.

The Committee intends that the United States exercise section 301 authority vigorously in pursuit of its international trade interests. The requirement for mandatory action with respect to the most egregious foreign practices reflects this intent and should provide additional leverage to obtain elimination or other satisfactory solutions to these practices. Mandating action with respect to certain cases in no way implies, however, that any less importance is attached to the vigorous pursuit of trade practices which are unfair even though not yet covered by international obligations. Section 301 as amended will ensure full consideration of the action to be taken and its potential outcome by all affected domestic interests.

Additional Actionable Practices

Section 121 makes explicit that the burden or restriction of a foreign act, policy, or practice on U.S. commerce may be on U.S. trade with third countries. It also makes export targeting specifically actionable under section 301, adds denial of worker rights and government toleration of systematic anticompetitive activities by private firms as "unreasonable" acts, policies, or practices, and adds reciprocity as a factor to be taken into account in "unreasonable" cases.

Present law

Section 301 presently applies to export targeting practices to the extent they meet the statutory criteria, but not to particular practices which may be part of a targeting scheme, such as home market protection, but are not GATT illegal or recognized as "unfair."

The present definition of "unreasonable" acts, policies, or practices which are specifically actionable under section 301 includes, but is not limited to, the denial of fair and equitable market opportunities, opportunities for the establishment of an enterprise, and provision of adequate and effective protection of intellectual property rights.

1. *Export targeting.*

Explanation of provision

Section 121 amends section 301(a)(1) to add a subparagraph (C) which makes "export targeting" actionable as an unfair policy or practice if the USTR determines that a policy or practice of export targeting by a foreign country exists and is, or threatens to be, a *significant* burden or restriction on U.S. commerce. "Export targeting" is defined under new section 301(e)(8), as "any government plan or scheme consisting of a combination of coordinated actions, whether carried out severally or jointly, that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist such enterprise, industry, or group to become more competitive in the export of any class or kind of merchandise."

The USTR, subject to the specific direction, if any, of the President, is required to take action against export targeting which is currently a significant burden or restriction on U.S. commerce, unless he finds such action is not in the U.S. national economic interest because it would result in such interests being more adversely affected if action were taken than if not, and he reports the reasons to the Congress.

Action would consist of:

(1) Retaliatory action under section 301(b) or (c), or both, against the goods or services of the foreign country to obtain the elimination of the export targeting; and/or

(2) Entry into an agreement under which the foreign country provides an imminent solution to the significant burden or restriction on U.S. commerce, or provides compensatory trade benefits satisfactory to the USTR.

In addition, the USTR, subject to the specific direction, if any, of the President, may take administrative actions and propose legislation to implement any other U.S. action to restore or improve the international competitive position of the domestic industry affected by export targeting.

Any retaliatory action must affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction on U.S. goods or services not otherwise eliminated. Any action must, to the extent possible, reflect the full benefit level of the targeting to the beneficiary over the period during which it has an effect.

If the USTR exercises the national economic interest waiver, he must promptly appoint a private sector panel of qualified experts, including representatives of management and labor in the domestic industry, to advise on measures to promote the industry's competitiveness. The panel must report its advice and recommendations to the USTR within six months; the USTR must forward the statement promptly to the Congress with any recommendations.

Retaliatory action is discretionary if the export targeting *threatens* to be a significant burden or restriction on U.S. commerce.

The USTR must report promptly in writing to the Congress on each action taken or the reason for taking no action on export targeting.

Reasons for change

The inclusion of export targeting within the scope of section 301 authority reflects the growing recognition in the United States that foreign industrial targeting practices can have an injurious impact upon the viability and competitiveness of U.S. industries. Basically, the provision applies to situations where the foreign government has sought to develop a particular industry by creating a relatively risk free environment to provide a competitive advantage the industry would not otherwise have under normal market conditions. Targeting is different from other potentially trade-distorting practices in that it involves a combination of actions any one of which may have a marginal impact on the industry's competitiveness, but which taken together artificially create a comparative advantage for the selected industry.

At the same time, the provision is not directed in any way against foreign industrial policies per se, which are solely a matter of internal government choice. Rather, it applies only when those targeting practices have the effect of increasing the export competitiveness of a particular industry in a manner that is, or threatens to be, a significant burden or restriction on U.S. commerce. If such policies cause significant harm to U.S. industries, they become an appropriate matter for action under U.S. trade laws. In the absence of such a burden or restriction, section 301 authority would not apply.

The inclusion of export targeting as an actionable section 301 policy or practice is not intended to prejudice the seeking of a remedy under the existing domestic relief laws as appropriate in the particular circumstances of each case. In fact, the countervailing duty law is normally the more appropriate statute for seeking a remedy to any subsidy practice which may be included in a targeting plan or scheme. Rather, section 301 will provide a recourse for dealing with the *combination* of practices that constitute export targeting that has an significant impact on domestic industries.

A determination of export targeting by the USTR would involve three elements. First, there must be a government scheme or plan involving coordinated actions. A positive determination would require that the targeting policy actually involves definite actions, not merely advice or a "vision" by the government. The actions also must not be isolated or uncoordinated; rather, they must be integrated into a reasonably coherent plan or scheme. While a showing of specific intent is unworkable given the unlikelihood of available evidence, the "plan or scheme" requirement is designed to ensure that the law deals with purposeful targeting and not with discrete forms of government activity.

Second, the USTR must determine that targeting practices are involved. The competitive advantage gained by targeting is typically achieved through a combination of practices, such as, but not limited to, directing private capital as well as government financial resources to the particular industry on a preferential basis, establishing an industry cartel, providing preferential sourcing of government procurement, closing or restricting the home market to foreign competition or investment in order to provide special protection during the establishment and development of the industry. These policies or practices supplement more traditional forms of subsidies and, when part of a government plan or scheme, have an effect similar to financial assistance in assisting a specific enterprise or industry to become more export competitive. However, the provision is directed primarily to the more sophisticated, less direct techniques which achieve similar results as direct subsidies that governments have resorted to as more traditional export subsidy practices are subject to discipline under international rules.

Third, the USTR must determine that the export targeting has the effect of assisting a discrete class of companies or industries to become more competitive in their export activities. The provision does not require a showing that the intent or purpose of the export targeting subsidy is to improve the competitiveness of a foreign industry in the U.S. market. A determination of motivation would be extremely difficult to make and would reduce the prospects for action. Rather, the *effect* of the government plan or scheme must be to promote export competitiveness in a manner that has a significant adverse impact on U.S. industry.

Policies or practices would not be defined as export targeting unless they are bestowed upon a specific enterprise or industry or group thereof. Such practices which are generally available to industries within the country would not be covered within the definition of export targeting.

Finally, export targeting would not be actionable under section 301 unless the USTR determines that it causes or threatens a significant adverse impact. While individual targeting actions may have only a marginal impact, their cumulative effect may create an export competitive advantage which is a significant burden or restriction to U.S. commerce.

In restricting actionable export targeting to cases in which its burden or restriction on U.S. commerce is "significant," the Committee recognizes that the USTR has considerable discretion under present law in determining what constitutes a burden or restriction. The Committee expects the USTR to consider various economic factors of the type examined by the International Trade Commission for its injury investigations. The Committee does not intend to establish a new injury standard, but does expect the USTR to apply a higher, somewhat more rigorous "injury" test than in other section 301 cases. Industrial policies of other countries should be actionable only if they cause or threaten an adverse impact on U.S. industry that is greater than in other cases involving practices that are generally recognized as unfair.

Action taken under section 301 must reflect as accurately as possible the full benefits of the targeting plan or scheme to the beneficiary enterprise or industry over the period during which it has an effect, rather than solely the cash cost to the foreign government. This method is necessary for making a realistic assessment of the actual benefit level in targeting cases, since many of the practices may not involve a simple cash transfer and their cumulative benefit may be greater than the current monetary value of an individual practice. For example, closing the home market to foreign competition or suspending antitrust laws may yield profits from higher prices and economies of scale that confer substantial competitive advantages to an industry. These benefits should be reflected in actions taken equivalent in value to the foreign practice.

Action in the form of administrative or legislative measures to make the domestic industry more competitive might include provision of antitrust or financial benefits, for example, but would not involve import restrictions.

The Committee intends that export targeting be actionable under section 301 if USTR determines that targeting is still in existence and meets the statutory definition, even though certain individual targeting practices may have ceased by the time the case is under investigation. Depending on the circumstances of the particular case, the assessment of the full benefit of the targeting could include the effect of targeting actions which were bestowed prior to the period of importation but which are still having an effect on the imports of the particular merchandise. Such an assessment would ensure that foreign countries cannot freely reap the current benefits of past unfair practices. In the future, domestic industries could seek action on the basis of export targeting which threatens to be a significant burden or restriction before the full impact of targeting occurs.

The Committee believes that USTR is the most appropriate agency, given its access to information from and consultations with foreign governments, to determine the existence of targeting. However, USTR should draw upon information and expertise of other agencies with respect to targeting practices in making its determinations.

Concerns have been expressed that certain U.S. Government practices (for example, investment tax credits; "spillover" benefits of defense and space research and development programs to the computer, commercial aviation, and spacecraft industries; and financing of agricultural price supports) may become subject to "mirror" actions by foreign countries against U.S. exports. It is highly questionable, however, that such practices would constitute export targeting, i.e., targeting which would require a government plan or scheme consisting of coordinated actions assisting a specific industry to become export competitive and in a manner which is or threatens to be a significant burden or restriction to foreign commerce.

2. *Worker rights.*

Explanation of provision

Section 121 amends section 301(e)(3) to include in the definition of *"unreasonable"* any act, policy, or practice that denies to workers the right of association; denies to workers the right to organize and bargain collectively; permits any form of forced or compulsory labor; fails to provide a minimum age for employment of children; and, taking into account the country's level of economic development, fails to provide standards for minimum wages, hours of work, and occupational safety and health.

As provided under section 124, the USTR may determine that the act, policy, or practice is not unreasonable if he determines that the foreign country has taken or is taking steps that demonstrate a significant and measurable overall advancement to afford such rights and standards throughout the country, including in any designated zone of the country.

Reasons for change

The basic purpose of the amendment is to define as an unfair trade practice actionable under section 301 the competitive advantage in international trade that some countries derive from the systematic denial to their workers of basic worker rights. The amendment adds to the illustrative list of unreasonable practices which the United States regards as unfair trade practices even though they may not be subject to international trade agreements.

The particular worker rights and standards enumerated are each covered by a convention of the International Labor Organization (ILO) ratified by a large number of countries. While the United States has not ratified these ILO conventions, each of the rights and standards is fully recognized by the United States under the Constitution or under separate domestic statutes. The list specifies the particular worker rights and standards included in the definition and is all-inclusive, not illustrative, of the rights and standards which could be the subject of petitions and potentially actionable under section 301.

The objective of the provision is establishment of basic worker rights and standards. It is not the intent of the amendment to apply U.S. laws or to impose U.S. standards of worker rights verbatim to other countries or to define as unfair the wage levels, hours of work, or occupational health and safety standards in foreign countries which are not at the same level as those in the United States. The provision also recognizes that minimum wage levels, hours of work, and occupational safety and health standards will differ among countries depending on levels of economic development and other indigenous conditions. For example, least developed developing countries would not be expected to apply such standards at the same level as advanced developing countries, nor are developing countries expected to meet the labor standards of highly-industrialized developed countries.

Detailed information may not be available to petitioners on specific administrative, legislative, or other domestic actions a foreign country may be taking to afford worker rights. Therefore, a petition may be filed and an investigation initiated based on an alleged denial of worker rights and/or standards. If, however, during the course of its investigation, the USTR finds that the country has taken or is taking steps that demonstrate significant and measurable overall advancement to afford worker rights, or that worker rights are not, in fact, being denied, USTR may determine under section 304 that an unreasonable act, policy, or practice does not exist.

It is the intention of the Committee that steps be significant and measurable in practice, not merely token or cosmetic. Steps forward should be considered in conjunction with any other actions or policies of the foreign government which may demonstrate retrogression in order to make a judgment as to whether there is improvement in the country overall toward granting worker rights.

The Committee recognizes that, as in our own social history, the attainment of worker rights can be a long and difficult process. Therefore, the Committee does not intend that the demonstrable taking of steps necessarily be limited to those taken during the finite maximum 12-month period between the filing of the petition and the USTR determination. At the same time, there should be overall improvement and advancement toward reaching the objective when measured over a reasonable recent period of time.

3. *Toleration of systematic anticompetitive activities.*

Explanation of provision

Section 121 amends section 301(e)(3) to include, in the definition of an "unreasonable act, policy, or practice that denies fair and equitable market opportunities, the toleration by a government of systematic anticompetitive activities by private firms or among private firms that have the effect of restricting, on a noncommercial basis, access of U.S. goods to purchasing by such firms.

Reasons for change

The amendment is intended to deal with foreign government toleration of certain activities by private firms which have the effect of excluding or restricting U.S. sales in a particular industry. This change reflects the growing concern on the part of the Committee that anticompetitive, market-restrictive behavior on the part of private firms, when coupled with the failure of a foreign government to intervene to eliminate such behavior, can act as a barrier to market access which is as great as any formal government act, policy, or practice. To the extent such behavior acts as a burden or restriction on U.S. commerce, it would be regarded as an unfair practice which is actionable under section 301.

The inclusion of certain anticompetitive private activities as an actionable section 301 act, policy, or practice is not intended to apply broadly to any and all purchasing decisions by private firms. It is intended to apply to pervasive or egregious activities in a foreign country by or among private firms which result in a persistent pattern of restricted market access by U.S. firms in a particular industry. This would include situations in which purchasing policies or decisions made by a parent firm in a foreign country affect access by U.S. firms to purchasing by the parent's subsidiaries in other countries.

The amendment requires that the anticompetitive behavior by or among private firms be systematic, be conducted on a basis that is inconsistent with commercial considerations, and that it be tolerated by the foreign government. This would include, but not be limited to, toleration of cartels or cartel-type behavior by or among private firms; failure to enforce antitrust laws; or toleration of closed purchasing behavior on the part of private firms that precludes or limits U.S. access in a concerted and systematic way. In making this determination, the USTR should take into account, among other factors, whether competitive domestic suppliers in that country are restricted to such purchasing, and the extent to which the foreign government supports, encourages, or tolerates such activities.

4. *Reciprocity*

Explanation of provision

Section 121 amends section 301(e)(3) to provide that in determining whether a foreign act, policy, or practice is "unreasonable," reciprocal opportunities in the United States for foreign nationals or firms shall be taken into account as appropriate.

Reasons for change

The amendment provides that in determining the existence of an "unreasonable" act, policy, or practice, appropriate consideration could be given to the denial by a foreign government of access to the market in that country and opportunities within that market generally reciprocating those available within the United States. Other factors that could be taken into account could be international norms or practices in similar circumstances.

The reciprocity consideration is not intended to be a limiting factor and alone would not necessarily determine whether the act, policy or practice is "unreasonable." Rather, it is a factor to be taken into account as appropriate. For example, even if the market opportunities provided in the foreign market equaled or exceeded those reciprocally provided in the United States, the particular foreign practice could be actionable if it were nonetheless unfair and inequitable or if the foreign government concerned were violating a trade or other agreement or denying national or MFN treatment.

Conversely, even if reciprocal opportunities were not provided in a foreign market, in many cases there might be valid reasons why the level of opportunities was nonetheless not "unreasonable." For example, the fact that a country might have higher tariffs than U.S. tariffs, either generally or for particular products, would not per se constitute a cause of action if the tariffs conformed to trade agreements. Further, the United States could have agreed expressly to that level of opportunities in exchange for other, greater benefits to U.S. economic interests. In such a hypothetical case, the United States could not declare the foreign government's act, policy, or practice to be "unreasonable" without renegging on its earlier agreement.

Action Implementation

Present law

Section 301(d)(2) requires the President to determine within 2 after he receives a recommendation from the USTR under section 304 what action, if any, he will take under section 301. The President may also decide under section 301(d)(1) to take section 301 action on his own motion.

Explanation of provision

Section 121 amends section 301(d)(2) to require the USTR, subject to the specific direction, if any, of the President, to implement any action under section 301(a)(1)(A) or (C) within 30 days after making a decision on such action initially under section 304 or subsequently under section 308(b) to enforce an agreement. However, the USTR may delay the *implementation* of any retaliatory action under subsection (b) or (c) by up to six months if: (1) the petitioner or the domestic industry requests a delay, or (2) the USTR determines that substantial progress is being made or that delay is necessary or desirable to achieve U.S. rights or a satisfactory solution with respect to the act, policy, or practice or export targeting.

The USTR must publish notice promptly in the Federal Register of each determination with respect to action, each delay in deciding or implementing action, and the reasons for the determinations or delay.

Reasons for change

The present statute does not require a final decision within a specific time frame on what action, if any, will be taken under section 301. A determination that "procedural" action, such as continuation of consultations with the foreign country or GATT dispute settlement proceedings, is the appropriate response has been regarded by the USTR as sufficient to satisfy the statutory requirement for a Presidential determination within 21 days after receiving the USTR recommendation. As a result, there has been no standard or definitive time frame applied for taking "substantive" section 301 action which may later be deemed appropriate or for concluding a case.

The amendment would impose a time limit on the USTR to decide any section 301 action he will take, including retaliation, and to implement that action. The 30 days between a USTR decision on action under section 304 or section 308(b) would provide an opportunity for any specific direction from the President to the USTR to implement an alternative course of action or to change the timing of implementation.

The purpose of the amendment is to expedite decisions and actions in meritorious section 301 cases, and to bring cases to final resolution within a reasonable time frame. The amendment will provide petitioners or domestic industries a time certain for knowing what, if any, action will be taken on their behalf. Under present law, cases have often continued under discussion for years without a final determination to act or to terminate, particularly when GATT proceedings are involved. However, the time limit imposed by the amendment is not intended to preclude the continuation of negotiations, but rather to provide additional leverage to obtain a satisfactory resolution. In particular, the authority to delay implementation of announced retaliatory action is intended to encourage and expedite further bilateral discussions to produce a satisfactory settlement.

Section 122. Investigatory Procedures

Present law

The investigatory procedures used by the USTR under section 302 of the Trade Act of 1974 do not contain any statutory provisions with respect to the obtaining, verification, or use of information obtained for making determinations.

Any interested person may file a petition under section 302(a) with the USTR requesting the President to take action under section 301 and setting forth the allegations in support of the request. If, after its review of the allegations, the USTR determines to initiate an investigation, he must publish a summary of the petition and provide an opportunity as soon as possible for the presentation of views concerning the issues, including a public hearing if a timely request is made by the petitioner or by any interested person.

Section 303 of the Trade Act requires the use of international procedures to proceed in parallel with the domestic investigation in order to seek resolution of the issues. The USTR, on the same day as he initiates an investigation, must request consultations with the foreign country concerned regarding the issues raised in the petition. If the issues are covered by a trade agreement and are not resolved during the consultation period, if any, specified in that trade agreement, then the USTR must promptly request formal dispute settlement proceedings.

The USTR may delay the request for consultations with the foreign government for up to 90 days after the investigation is initiated, with a published notice and report to the Congress of the reasons, in order to verify or improve the petition to ensure an adequate basis for consultations. The USTR must seek information and advice from the petitioner and from appropriate private sector advisory committee representatives in preparing U.S. presentations for foreign consultations and dispute settlement proceedings.

Explanation of provision

Section 122 of H.R. 3, as amended, adds a section 302(d) concerning the obtaining of information by the USTR for investigations and decisions. With respect to any investigation initiated, the USTR shall direct appropriate inquiries to the foreign countries relevant to the investigation for purposes of obtaining information relevant to determinations and recommendations. The USTR may request the foreign country to provide documentation or permit verification of the information as the USTR considers appropriate. The USTR may disregard all or part of the foreign country information requested and use the best information otherwise available if the foreign information is not timely, is incomplete or inadequate, or is not sufficiently documented or verified.

Section 122 also amends section 303(b)(1)(A) to require that the USTR consult with the petitioner before deciding to delay consultations with the foreign government.

Reasons for change

The amendment providing for inquiries to foreign countries to obtain information reflects current USTR practice. There is no uniform procedure or practice in place, however, for the treatment or use of information obtained in section 301 cases. The amendment authorizes the USTR to use certain procedures for verification and use of foreign information but is not intended to remove the flexibility necessary for conducting investigations as appropriate to the circumstances of the particular case. Most importantly, the amendments authorize the USTR to use the best information otherwise available if foreign information is not timely or satisfactory in a particular case.

Section 123. Consultation Upon Initiation of Investigation

Present law

Section 303 of the Trade Act of 1974 requires that if a mutually acceptable resolution is not reached with the foreign country involved during the consultation period, if any, specified in an applicable trade agreement, the USTR must promptly request formal dispute settlement proceedings under that agreement.

Explanation of provision

Section 123 of H.R. 3, as amended, amends section 303 to impose a maximum period of five months for consultations. Dispute settlement proceedings must be requested if a solution is not reached during the consultation period under the agreement or within five months, whichever is earlier.

Reasons for change

The amendment imposes a maximum time certain for consultations to provide additional leverage to reach a solution without the need to resort to formal dispute settlement proceedings. Since five months is the maximum time period, dispute settlement could be requested earlier if consultations are not progressing satisfactorily or if more than 13 months may be necessary to conclude dispute settlement proceedings before the 18-month time limit for a USTR decision under section 304 (as amended by section 124) in non-subsidy trade agreement cases.

Section 124. Action Decisions by Trade Representative

Present law

Section 302(a)(2) of the Trade Act of 1974 requires the USTR to review the allegations in a petition and determine, within 45 days after the petition was received, whether to initiate an investigation. Section 303 requires that on the same day as the USTR initiates an investigation, he must request consultations with the foreign government involved concerning the issues. This request may be delayed for up to 90 days in order to verify or improve the petition.

Section 304(a) of the Trade Act requires the USTR to make a recommendation to the President within certain time limits on what action, if any, he should take under section 301 authority with respect to the matters under investigation. Recommendations are based on the investigation under section 302 and the international consultations (and dispute settlement proceedings if applicable) under section 303. There is no provision in present law that specifically requires the President to make a formal determination as to whether section 301 criteria are met by the particular foreign act, policy, or practice under investigation.

The USTR must make a recommendation to the President not later than—

7 months after initiation of the investigation if the petition alleges only an export subsidy covered by the GATT Subsidies Agreement;

8 months after initiation of the investigation if the petition alleges a domestic subsidy or both export and domestic subsidies covered by the GATT Subsidies Agreement;

30 days after the dispute settlement procedure is concluded if the petition involves a trade agreement other than the GATT Subsidies Agreement; or

12 months after initiation of the investigation in any other case.

These time limits may be extended by up to 90 days if the request under section 303 for foreign consultations was delayed.

Before making a recommendation under section 304 to the President on what section 301 action, if any, he should take with respect to any product or service subject to the petition, section 304(b) requires the USTR to afford an opportunity for the presentation of views, including a public hearing if requested by any interested person, and to seek advice from appropriate private sector advisors. The USTR may request ITC views on the probable impact on the U.S. economy of taking action with respect to particular products or services. If the USTR determines expeditious action is required, he must comply with these requirements after making the recommendation to the President.

Explanation of provision

Section 124 of H.R. 3, as amended, amends section 304(a) to require a formal determination by the USTR in all section 301 cases of whether and what statutory criteria are met by the particular foreign act, policy, or practice. The USTR must determine whether U.S. rights are being denied or any foreign act, policy, or practice actionable under section 301 exists.

Section 124 also imposes a time limit under section 304(a) of *18 months* after initiation of an investigation or 30 days after conclusion of dispute settlement, whichever is earlier, in all GATT and other trade agreement cases that do not involve alleged subsidy practices for the USTR to make a determination and a decision on action or on a recommendation to the President. Other time limits under present law would not be affected.

The USTR must make a determination as to whether export targeting exists and causes or threatens a significant burden or restriction on U.S. commerce within six months after initiating an investigation. The USTR may consult with appropriate Federal agencies in making the determination. If the determination is negative, the investigation would terminate. If the determination is affirmative, the USTR, subject to the specific direction, if any, of the President, must decide what action to take and to implement that action within 12 months of initiation (subject to provisions for delay).

The USTR must provide a minimum 30-day advance notice for the presentation of views by interested persons under section 304(b) before deciding on section 301 action. The definition of "interested persons" added to section 301(e) for purposes of presenting views specifically includes, but is not limited to, domestic firms and workers, consumer representatives, and exporters that may be affected.

In export targeting cases, the USTR must also consult with representatives of the affected U.S. industry and workers and other interested persons concerning the nature of appropriate remedial action, including possible affirmative measures to enhance the international competitiveness of the industry.

Reasons for change

The amendments would impose a more certain and shorter time period for concluding investigations and making decisions or recommendations on action in section 301 cases with respect to trade agreements that do not involve alleged subsidy practices. At the present time, there is no fixed or standard time limit for conclusion of GATT dispute settlement proceedings. Particularly in cases involving proceedings under the general consultation and dispute settlement procedures of GATT Articles XXII and XXIII, there may be lengthy procedural delays or countries may block adoption of panel findings.

The imposition of a maximum 18-month time limit for USTR decisions on action or recommendations in non-subsidy GATT or other trade agreement cases will hopefully provide leverage and incentive for adoption in the GATT of more expeditious and effective dispute settlement procedures. In any case, exercise of the domestic statutory authority under section 301 is not contingent upon completion of international proceedings or upon an international finding that a particular practice is actionable. Rather, section 301 should afford a timely response to domestic petitioners and industries faced with foreign unfair practices even if such proceedings are not concluded within a reasonable time frame.

The 12 months provided in export targeting cases provides a six-month period after an affirmative determination for the USTR to negotiate with the foreign country and to develop an appropriate solution to these complex cases.

The amendments also ensure that the USTR has provided adequate opportunity for all private sector interests that may be affected by a particular section 301 action to present their views. The consultations required in export targeting cases are for the purpose of assisting in the choice of an appropriate response, taking into account all interests that may be affected.

Section 125. Modification and Termination of Actions; Monitoring of Foreign Compliance

Section 125 of H.R. 3, as amended, adds new sections 307 and 308 to provide explicit authorities to modify or terminate section 301 actions and to monitor and enforce compliance by foreign governments with section 301 settlement agreements.

Modification and Termination of Actions

Present law

There is no explicit authority under present law for the President to modify or terminate section 301 actions, or to provide compensatory trade concessions to foreign countries if section 301 actions violate U.S. international obligations under trade agreements.

Section 306 of the Trade Act of 1974 requires a semiannual report to the Congress describing petitions filed, determinations made, actions taken or reasons for no action, and the current status of cases.

Explanation of provision

Section 125 of H.R. 3, as amended, adds a section 307 which specifically authorizes the USTR to modify or terminate a section 301 action at any time if—

(1) the GATT Contracting Parties determine or a GATT panel reports that the action violates, or is inconsistent with, U.S. international obligations or that the foreign act, policy, or practice is not a violation of or inconsistent with a trade agreement or does not otherwise deny, nullify, or impair trade agreement benefits; or

(2) the USTR determines (a) the foreign act, policy, or practice is being eliminated or phased out satisfactorily, (b) the section 301 action is not effective, or (c) continuation of the action is not in the national economic interest.

The USTR must conduct a biennial review and assess the results and commercial effects of each action taken under section 301, and decide any modifications or termination he considers appropriate. The USTR must consult with the petitioner and other interested persons affected by the action and provide an opportunity for public views concerning its effectiveness and whether any modification or termination is indicated. Any modification may be either an increase or a reduction in the level or the form of action, as appropriate. The USTR must promptly publish and report to the Congress any modification or termination and the reasons.

Section 116 of H.R. 3, as amended, amends section 123 of the Trade Act of 1974 to authorize compensation agreements with foreign countries affected by section 301 actions if necessary or appropriate to meet U.S. obligations to restore the balance of trade agreement concessions.

Conforming amendments under section 127 add a requirement that the semiannual report to the Congress on section 301 petitions and their status also describe the commercial effects of recent section 301 actions.

Reasons for change

The amendments will provide the USTR specific authority to modify or terminate section 301 actions if they are subsequently found to violate the GATT or if the action is ineffective. Modifications could either be reduction or elimination of the action if it has achieved the desired objective or continuation is not in the U.S. economic interest, or additional or increased measures if further leverage or offsetting action is deemed necessary and appropriate. Compensation authority is available as provided under section 116 if section 301 actions are found to violate the GATT.

The purpose of the commercial effects analysis is to promote a better understanding of both the benefits and the costs entailed in section 301 actions. The requirement would be construed broadly to include unilateral liberalization of its market by a foreign government in response to a section 301 matter, agreements negotiated with foreign governments to resolve section 301 issues, and retaliatory actions taken unilaterally by the United States because of failure to resolve the dispute through negotiations. In all such cases, it would be helpful to the President, Congress, and general public to be familiar with the track record of economic gains and losses to the United States.

Monitoring of Foreign Compliance

Present law

There is no specific authority under present law for the USTR or the President to monitor implementation of or compliance with actions undertaken by foreign appointments in section 301 cases in lieu of U.S. retaliation.

Explanation of provision

Section 125 adds a section 308 requiring the USTR to monitor implementation of any measures undertaken, or compliance with any agreement entered into, by a foreign country to grant U.S. rights under trade agreements, to eliminate or phase out the act, policy, or practice or to remove its burden or restriction on U.S. commerce, or to provide compensatory benefits as settlement of any section 301 case. If the USTR considers that the foreign country is not implementing or complying satisfactorily, USTR shall decide what action, if any, he shall take under section 301, subject to the specific direction, if any, of the President, to be treated as if it were a decision under section 304. If there is not implementation of, or compliance with, a settlement agreement, the matter will be subject to the mandatory retaliation provisions as set forth under section 301(a)(1), including agreements to settle cases initially under the discretion authority of section 301(a)(2). Before making a decision, the USTR shall consult with the petitioner or domestic industry, provide an opportunity for public views, and obtain advice from appropriate advisory representatives.

Reasons for change

The amendment ensures that the USTR will follow up on actions undertaken by foreign governments in lieu of retaliatory action by the United States as settlement of section 301 cases, in order to make certain that such settlements are actually fully implemented. The fact that a foreign government has agreed to undertake certain measures or action does not, in and of itself, remove the burden or restriction of their act, policy, or practice that initiated the section 301 case. Therefore, it is essential that USTR closely monitor foreign implementation and compliance with all settlement agreements. Since agreement by the foreign government is in lieu of section 301 action by the United States noncompliance should be subject to mandatory retaliation under section 301(a)(1), as if it were the initial investigation involving the violation of a trade agreement.

Section 126. Mandatory Negotiations and Action Regarding Foreign Countries Having Excessive and Unwarranted Trade Surpluses With the United States

Present law

There are no special provisions mandating comprehensive negotiations and actions with regard to countries that maintain patterns of unjustifiable or unreasonable trade policies or practices. Section 301 generally permits the President to take certain actions against such policies or practices, but on a discretionary basis against specific practices or policies.

Explanation of provision

Section 126 as amended by the Committee adds a new Subchapter B to Title III—section 311(a) through (j)—to mandate negotiations and possible action against any country which meets three general criteria: (a) a large and excessive trade surplus with the United States (as defined below); (b) a global trade surplus; and (c) a pattern of unjustifiable, unreasonable, and discriminatory trade policies or practices that have a significant adverse effect on United States commerce and that contribute to such country's excessive surplus. The provision mandates comprehensive negotiations and possible reciprocal trade actions against countries which meet these criteria for the period 1986 through 1991. The purpose of such negotiations and action is to seek an *overall* reduction in the unfair trade policies of excessive surplus countries, rather than relying on item-by-item negotiations under normal section 301 procedures.

Under section 311, the International Trade Commission (ITC) makes annual findings with respect to excessive bilateral and global surpluses, while the United States Trade Representative (USTR) makes the annual determination as to a country's overall trade policies and negotiates with such country to achieve the surplus reduction goals. If such negotiations fail, the USTR is given a broad range of options for action against such countries to ensure overall reduction in their unfair trade practices or policies. The USTR is required to take such action, unless he determines that certain narrow national economic interest criteria require waiver of action. Any waiver may be disapproved by Congress under fast track legislative procedures. The USTR's authority to act and to grant waivers is subject to the same specific direction of the President as is his authority under Section 301 for the same reasons stated in the explanation of that section.

The new provisions of section 311 would operate in the following manner:

ITC Determinations

Under a new section 311(a), the International Trade Commission (ITC) is required to make an annual determination as to whether any "major U.S. trading partner" (countries with more than $7 billion in trade with the U.S. in 1986 adjusted annually thereafter) maintains an "excessive trade surplus" (a ratio of bilateral nonpetroleum exports over nonpetroleum imports of 175 percent; a total bilateral nonpetroleum surplus with the United States in excess of $3 billion; and a global trade surplus). The first such determination is to based on 1986 trade and is required by August 1, 1987. Subsequent annual determinations for 1987-1990 trade are due within 3 months of the completion of the calendar year. No ITC determinations are required if the U.S. merchandise trade deficit is less than 1.5 percent of GNP.

USTR Determinations and Country List

Under a new section 311(b), within 15 days after the ITC determination, the USTR must determine whether any "excessive surplus" country maintains a "pattern of unjustifiable, unreasonable or discriminatory trade policies or practices that have a significant adverse effect on United States commerce and contribute to the excessive trade surplus of that country." This determination is to be based upon findings in the National Trade Estimates Reports under section 181 of the Trade Act of 1974, findings and determinations under section 301 of the Trade Act of 1974, the Antidumping Law and the Countervailing Duty Law, and other relevant information (including GATT findings). Evidence of such a pattern would include: subsidy policies; targeting policies; illegal trade barriers; unreasonable or discriminatory procurement policies; a burdensome tariff structure; excessive regulatory activity designed to discriminate against U.S. products; and tolerance of extensive dumping in foreign markets by the government.

If the USTR's determination is affirmative, such country must be placed on a list of countries with "excessive and unwarranted bilateral trade surpluses" and is subject to further negotiations and actions as described below.

USTR Negotiations

After a country is placed on the list, under a new section 311(c) the USTR is given 6 months (with a possible 2-month extension if necessary) to negotiate an agreement with such country which provides for:

(a) the substantial reduction of any unjustifiable, unreasonable, or discriminatory acts, policies, or practices of the foreign country that were determined under subsection (b)(1); or

(b) the substantial reduction of the adverse effect which such acts, policies, and practices have on United States commerce.

In deciding whether the terms of an arrangement will achieve the substantial reduction requirements set forth above, the USTR is required, to the extent possible, to estimate the commercial value of the foreign country's unfair trade practices and must be satisfied that the terms will allow United States firms a realistic opportunity to improve their share of trade with that country by an amount equal to that value.

Presidential Action if Negotiations Are Unsuccessful

If no agreement is achieved, the USTR, subject to any specific direction which the President may make, is required under a new section 311(d) to take any actions specified in section 301(b) which he considers necessary and appropriate against each unjustifiable, unreasonable, or discriminatory act, policy, or practice of that country which is found to exist during the course of investigations and negotiations. Such action is mandatory, subject to the waiver procedures described below. The form of action under this section is discretionary, but the scope of action must be devised so as to equal in value the burden or restriction of the foreign acts, policies, or practices on U.S. commerce. Section 301(b) authorizes several different measures against the goods of offending countries and also authorizes the suspension or withdrawal of trade agreements with regard to such countries.

Reviewable Presidential Waivers

A newly created section 311(e) sets forth conditions under which the USTR may, subject again to Presidential direction, waive action otherwise required under subsection (d).

The USTR may waive the taking of any action with respect to one or more of the acts, policies, or practices of a foreign country if he considers that the taking of any such action with respect to—

> (a) any unjustifiable act, policy, or practice would result in the national economic interest of the United States being more affected, to a significantly adverse extent, than if such action were not taken; or
>
> (b) any unreasonable or discriminatory act, policy, or practice would result in the national economic interest of the United States being more adversely affected than if such action were not taken.

The USTR may modify or terminate action under this section upon the same grounds provided for under section 707, such as where the GATT subsequently rules against our action or the foreign country eliminates its unfair practice.

Subsection (e) provides for Congressional disapproval of USTR waivers by joint resolution under the fast-track legislative procedures of section 152 of the Trade Act. If such a resolution is enacted into law within 60 days of the referral of a waiver to Congress, the waiver would be revoked and the USTR would be required to take action under section 301(b) against the practice or policy for which the waiver was exercised. Of course, the President could veto such a resolution and its enactment would only occur if Congress were to override his veto.

Currency Manipulation

The Committee also adopted a new provision, section 311(f), which requires the Secretary of the Treasury to determine if an excessive surplus country is maintaining its currency at an artificially low level that does not reflect the country's competitive strength in world markets. It further requires the Secretary to initiate negotations with the government of any such country for the purpose of entering into an agreement which will ensure realistic realignments of that country's currency. If the foreign government refuses to negotiate or enter into an agreement, the President may direct the Secretary to impose an exchange rate equalization tariff on U.S. imports of products from that country.

Reasons for change

The Committee believes that a new, comprehensive procedure is necessary to fill a significant void in U.S. trade law. Current trade laws, dealing as they generally do with sector-specific problems, have not proved effective in countering the trade-distorting policies and practices of countries experiencing large and persistent trade surpluses through the widespread use of unfair trade practices. Even section 301 (prior to this amendment), while considered a flexible statute capable of dealing with a wide range of unfair trade practices, has generally been used to address foreign trade policies and practices affecting single sectors. It does not appear to the Committee that section 301, absent this amendment offers a mechanism which is sufficiently broad to deal with the full spectrum of a country's acts, policies, and practices as they affect that country's overall international trade position. Similarly, the new provision on targeting, while requiring a review of a wide range of a country's trade policies, deals essentially with the sector-specific results of targeting. In contrast, the Committee believes that section 311 as amended by the Committee, gives the President all the authority and flexibility which he will need to induce large surplus countries to take immediate steps to remove their trade barriers in a manner which will cause substantial reductions in their trade surpluses, since such countries face certain and sweeping action by the United States if they fail to do so.

The need for this legislation seems clear. The GATT system of international trade is based on the fundamental premise that trade is a mutually advantageous proposition in which all nations gain through a higher standard of living for their citizens. The Committee does not dispute this premise. However, the Committee does believe that international trade, as pursued by some nations today, is not in fact mutually advantageous. The phenomenon of one or a few countries amassing huge trade surpluses through relatively unimpeded access to the U.S. market, while denying equitable access to their markets by the United States and other trading partners, robs the trading system of its essential characteristic of mutual advantage. The Committee believes that the time has come to call a halt to this type of broadly unequal access and the ability to profit handsomely by it, as some countries have done—and continue to do.

The Committee notes with interest certain data compiled by the GATT Secretariat, showing the share of total developing countries manufactured exports which is imported by each major developed nation. These data show the following trends:

SHARE OF TOTAL INDUSTRIAL COUNTRY IMPORTS OF MANUFACTURES FROM LDCs

[Percent]

	U.S.	Japan	E.C.	Canada	EFTA
1979	45.3	10.7	36.6	3.0	4.4
1980	44.9	8.9	38.4	2.7	5.1
1981	51.4	9.5	31.1	3.4	4.7
1982	52.8	8.9	30.4	3.2	4.8
1983	57.6	7.7	27.0	3.7	4.0
1984	61.6	8.0	23.0	3.9	3.6
1985	63.0	7.4	22.7	3.6	3.3

Source: USTR, and GATT publication: International Trade 1985/86.

These trends show the United States absorbing an ever-increasing share of manufactured goods from developing countries, while other countries' or blocs' shares have either declined sharply (in the case of the EC) or have declined from a quite low share to an even lower share (as in the case of Japan). So while some major trading countries are reaping the gains of an open U.S. market, they are compounding the distortions of international trade patterns by taking an ever-shrinking share of developing country manufactured exports. The United States is left to take up the slack. Trends such as these must change, and they must change quickly.

The data above are just one example of the concerns felt by the Committee with respect to the trade policies and patterns of some of our major trading partners. Some of the same countries identified in the table are running large trade surpluses not only with the United States but with the world as well. Japan, for example, amassed a record $59 billion surplus with the United States and a $83 billion global trade surplus in 1986. West Germany's surplus with the United States totalled $16 billion in 1986, compared to a global surplus of $52 billion. Taiwan, which does not appear in the table above, ran a $16 billion surplus with the United States, compared to a global surplus of $10 billion.

What seems clear is that certain countries are reaping large gains from the world trading system and appear unwilling to take the steps which are necessary to begin shouldering a greater share of the responsibilities—in addition to the benefits—of that system. The intent of section 311 is to give the President the leverage to bring about a more equitable sharing of that responsibility.

The first step in the process of determining whether a country maintains an excessive and unwarranted trade surplus comes from the ITC. The ITC finding as to whether or not a country maintains an excessive surplus with the United States is based on a number of criteria spelled out in detail in the previous section. These criteria were selected for a number of reasons. The requirement that a country have more than $7 billion in total trade with the United States is designed to exclude smaller trading nations from the purview of this legislation. While attempting to craft additional leverage for U.S. negotiators to open foreign markets, the Committee has no intention of throwing such a wide net that even countries with limited impact on the U.S. market are caught by its reach.

Oil was excluded from certain criteria of this section primarily because international trade in oil is so heavily dominated by vagaries of supply and price which are far outside the scope of normal market forces. As a result, trade patterns based on oil are themselves heavily distorted. In addition, while the OPEC cartel now appears to be weakening (at least temporarily), the basic determinants of petroleum trade stem from whether a country is oil-rich or oil-poor and have nothing to do with the degree of market openness of a particular country. Accordingly, oil trade does not appear to be an appropriate factor to consider when assessing a country's trade patterns as they relate to market openness.

The Committee nonetheless recognizes that some countries' resource endowment makes them structural importers of oil and requires that they export manufactured goods. Section 311 takes this fact into account in requiring that countries not only maintain a large bilateral non-oil surplus with the United States but that they also maintain a global trade surplus. If a country's overall balance of payments (including oil trade and debt payments, if any) is such that requiring action against such country would cause economic harm to U.S. economic interests (i.e., the financial interests of U.S. banks or potential export earnings for U.S. exporters), the President may grant a partial or complete waiver, subject to Congressional override.

Once the ITC has identified major U.S. trading partners which maintain excessive trade surpluses, the USTR is given 15 days to determine whether any such country maintains "a pattern of unjustifiable, unreasonable, or discriminatory trade policies or practices that have a significant adverse effect on United States commerce and contribute to the excessive trade surplus of that country."

Although a 15-day period for the USTR determination may appear short, the actual period available for this determination is far longer. For the first year, the USTR may begin an assessment on the date of enactment, since countries which are likely to fall within the scope of section 311 based on 1986 trade data already are well known. For subsequent years, the USTR can, through consultations with the ITC throughout the year and into the first two months of the following year (as that agency makes its determinations) assess whether trade patterns are likely to change sufficiently to require adding additional countries to the list.

The USTR's determination must be based on all the information at his disposal. The terms "unjustifiable, unreasonable, and discriminatory" have well-known and accepted meanings under section 301. The Committee intends the USTR to be guided in his determinations under this section by those meanings. In addition to reliance on those terms, the USTR is required to take into account all of the information available to him through a wide variety of domestic or international sources. Thus, while the USTR determination involves a certain amount of inherent subjective judgment, the Committee intends that the USTR make an overall assessment as to whether a country which is enormously successful in its trade with the United States is truly practicing fair and reciprocal trade or whether that country is using its policies and practices to frustrate reciprocal trade.

With respect to this determination, the Committee intends that there be an affirmative determination even when the pattern involves only a relatively small number of policies or practices of sufficient magnitude to meet the basic test of unfairness. In addition, the Committee intends that there be an affirmative USTR determination in cases in which foreign government policies and practices bear heavily on a few key trading sectors in which large trade surpluses contribute heavily to the excessive bilateral surplus. However, there must be a clear demonstration that these policies and practices have a significant adverse effect on U.S. commerce and contribute to a country's excessive trade surplus.

The Committee is particularly concerned with foreign market barriers which exclude competitive U.S. exports. Each year, pursuant to Section 303 of the Trade and Tariff Act of 1984, USTR undertakes a survey of foreign market barriers to U.S. products, and the survey shows that numerous barriers exist in some countries which also have large trade surpluses with the United States. The 1986 USTR survey, for example, showed that Japan maintains formal quotas on imports of rice, fruit juices, beef, many processed foods, leather goods and other products; unusually high tariffs on aluminum, alcoholic beverages and other products; a variety of restrictive government procurement practices in the high technology field such as supercomputers; and numerous other nontariff barriers affecting competitive U.S. exports such as soda ash, auto parts, satellites and services of all types. The sectoral barriers cited in USTR's Section 303 have in many cases already been the subject of extensive investigation by the U.S. government and should clearly be among the sectoral problems addressed by USTR in negotiations undertaken pursuant to this legislation.

Once the USTR determines that a country's trade policies and practices meet the relevant criteria the USTR must place that country on a list of countries with "excessive and unwarranted trade surpluses." That country then is subject to further negotiations and actions, as described in detail in the explanation section above.

Section 311 gives the USTR 6 months (with a possible 2-month extension) to negotiate an agreement with any excessive and unwarranted surplus country. Such an agreement could contain provisions which substantially open the foreign market through the elimination of unfair barriers or policies, or could provide for an increase in imports from the United States or limitation on exports to the United States in a manner which would substantially reduce the effects of their unfair practices on U.S. commerce. If the USTR fails to reach an agreement, the President is required to take any of a broad range of possible actions which would be appropriate to counteract the foreign practices or policies.

The Committee recognizes that a 6 month time period for negotiation places intense pressure on both the USTR and on the U.S. trading partners concerned to reach a satisfactory agreement quickly. Indeed, that is the Committee's clear intent. Trading partners which have amassed large surpluses at the expense of the

United States are being put on notice that they must act swiftly to remedy the situation; failure to do so means that they leave the choice to the United States as to the nature and extent of reciprocal action against their unfair trade barriers.

Subsection (d) as amended by the Committee requires appropriate action by the USTR under Section 301(b) against all unjustifiable, unreasonable and discriminatory practices of an excessive and unwarranted surplus country in cases where a satisfactory reciprocal agreement is not reached with such country. This requirement for action, subject to any specific directions by the President (in the same manner as with his authority under section 301) and subject to the economic interest waivers described below, is intended to ensure *comprehensive* action against foreign practices or policies that violate section 301. The form of action is discretionary, and the USTR may select the most appropriate measures from among those authorized in section 301(b); but the degree and scope of action must be devised in such a way as to equal the foreign burden or restrictions on U.S. commerce. The Committee recognizes that it is not often possible to assign a precise value to certain unfair trade practices, and it is presumed that USTR would make its best efforts to approximate the value of those practices not resolved through negotiations and devise countermeasures which are roughly equivalent.

Subsection (e) provides Presidential waiver authority under certain circumstances.

This waiver authority is narrowly limited to cases involving harm to the national *economic* interest. Moreover, the waiver provisions require a weighing of the harm caused by action under this section against the harm caused by the foreign barrier or policy. With regard to "unjustifiable" policies or practices, there must be a finding that United States interests would be more affected, to a "significantly adverse extent," than if such action were not taken. For "unreasonable" or "discriminatory" policies or practices, the USTR need only find action would have a more adverse effect than allowing the policy or practice to continue.

The Committee established a more restrictive waiver for "unjustifiable" policies or practices because it believes that, wehre violations of trade agreements or other international legal rights occur, the discipline of this section should be applied to excessive surplus countries unless doing so would cause substantial harm to our own economy. In other cases, the Committee believes a mere weighing of economic costs is sufficient (the cost of retaliation versus the cost of the foreign barrier). The Committee therefore intends that a showing of a "significant adverse effect" be required in such cases, in addition to a weighing of the costs.

The Committee did not adopt a specific waiver for debtor countries. However, it is the Committee's intent that the economic interest waiver could be applied to cases involving countries with significant balance of payments difficulties. Where the USTR finds that the effect of his action would be to significantly disrupt the financial stability of a debtor country, he could determine that such action would result in the appropriate level of harm to the national economic interest.

The waiver of action under this subsection may be either partial or all inclusive. The USTR could waive action against only one offending practice with respect to a particular country, or he could waive action against several or all offending practices. The scope of his waiver would depend on his assessment of the national economic interests with regard to each practice. The Committee does not intend to allow blanket waivers as a general rule, however, and its expectation would be that waivers would constitute the exception rather than the norm.

Subsection (f) creates new procedures and powers with regard to currency manipulations by excessive surplus countries. The Committee is concerned that certain foreign governments may be pursuing an exchange rate policy whose effect, whether intended or not, is to give that county an unfair competitive advantage over other countries engaged in international trade. Manipulation or control by a foreign government of its currency in such a manner has the same effect as an across-the-board subsidy directed at the country's exports. The effect is to stimulate exports and discourage imports of all kinds. The International Monetary Fund was established in the immediate postwar period, in part "to avoid competitive exchange depreciation" following the pervasiveness of that practice in the prewar period. The problem today is not nearly as widespread, but its effects, even if confined to a handful of countries, still merit concern.

The Committee recognizes that negotiations on exchange rate matters are a very sensitive endeavor. However, this provision is intended to give the Secretary of the Treasury the flexibility to deal with situations in which governments appear to be using their exchange rate to gain an unfair competitive advantage over other countries in international trade. Action under the provision is discretionary and may be taken only at the direction of the President. This reflects the Committee's desire to see this provision used to engage foreign governments in good-faith efforts to ease the distortions that their currency practices may be having on international trade flows.

Section 127. Conforming Amendments and Effective Date

Section 127 of H.R. 3, as amended, sets forth conforming amendments to the Trade Act of 1974 and effective dates for the amendments made under Chapter 2 of Title I, subtitle B of this Act. Among the conforming changes is an amendment to require that the semi-annual report to the Congress required under section 306(3) of the Trade Act of 1974 on section 301 cases describe the commercial effects of section 301 actions, in order to provide a better understanding of the track record of national economic benefits and costs of such actions.

The amendments made by Chapter 2 apply as of the date of enactment of this Act, except that the amendments made by sections 121 (action required in response to determinations) and section 122 (investigatory procedures) apply to petitions filed and investigations initiated under section 302 on or after the date of enactment, or by the date of enactment if no decision has previously been made under section 304 on the particular case.

Section 128. Sense of Congress Regarding the Expeditious Disposition of 301 Cases Relating to Unfair Foreign Agricultural Export Practices

Present Law

No provision.

Explanation of provision

Section 128 of H.R. 3, as amended, expresses the sense of Congress that the USTR should take all necessary or appropriate action to conclude, as soon as possible, all pending cases under section 301 of the Trade Act of 1974 that involve unfair foreign agricultural export practices, including export subsidies and differential export taxes.

Reasons for change

Several section 301 cases involving foreign agricultural export practices have been pending for years without resolution. This sense of Congress is consistent with the new deadlines imposed under sections 121 and 123 of this Act for determinations, action decisions, and for implementation of any action in pending, as well as future, section 301 cases in order to conclude cases within a reasonable period of time. The intent of the provision is to pursue pending cases involving agricultural products as aggressively, but not more favorably than action on cases involving other goods or services.

Subtitle C—Relief from Injury Caused by Import Competition

Chapter 1—Industry Relief from Injury Caused by Import Competition

Section 131. Import Relief

General Overview

Present law

Chapter 1 of Title II of the Trade Act of 1974 as amended (commonly referred to as "section 201" or the "escape clause") sets forth the procedures and standards for domestic industries to obtain temporary relief from increased import competition which has resulted in serious injury. Under section 201, U.S. firms or workers may file a petition with the International Trade Commission (ITC) for temporary import relief. The President, U.S. Trade Representative, Committee on Ways and Means of the House, or Committee on Finance of the Senate may also request such an investigation. The ITC then conducts an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

If the ITC makes an affirmative injury determination, it then considers and recommends to the President such action as necessary to prevent or remedy the injury. If the ITC determines that adjustment assistance can effectively remedy the injury, it recommends the provision of such assistance. If the ITC determines that import relief is necessary, it recommends such tariff increase or quantitative restriction as is necessary to prevent or remedy the injury.

The ITC is required to report its findings and recommendations to the President within six months of filing of the petition. Within 60 days of receiving such report, the President must provide import relief unless he determines that it is not in the national economic interest. The form of import relief which may be provided consists of the following:

(a) an increase in, or imposition of, tariffs (not to exceed a rate 50% above existing rates);
(b) a tariff-rate quota;
(c) quantitative restriction on imports;
(d) negotiation of orderly marketing agreements; or
(e) a combination of such actions.

Relief is temporary in order to encourage adjustment of the domestic industry to increased import competition. Relief may be provided initially for up to five years. To the extent feasible, any relief provided for more than three years must be phased down beginning the fourth year. An extension of relief may be provided for up to an additional three years.

General explanation and reasons for change

The amendments to the escape clause which have been approved by the Committee generally reflect a desire to improve the effectiveness of section 201 in addressing serious injury caused by imports and in providing for actual adjustment during the period of relief. Factors which should be considered in determining whether increased imports are a substantial cause of serious injury have been clarified and expanded. The types of actions which may be taken to provide relief to the domestic industry have been expanded to include international negotiations. New provisions to provide faster relief for perishable agricultural products or cases involving critical circumstances have been added. Numerous provisions are designed to promote adjustment during the period of import relief, so that protection from import competition is not a "free ride." The bill includes provisions to encourage domestic industries to take steps which will further their long-term competitiveness during the period of import relief.

Industries which may not be able to ensure long-term competitiveness by corrective actions during the period of import relief could still obtain import relief as a means of facilitating more orderly adjustment than might occur absent import relief. In either case, however, increased monitoring of the industry during the period of import relief is meant to increase accountability of the industry's efforts to enhance its competitiveness or otherwise adjust to import competition.

Finally, the Committee is concerned about the lack of detail provided to the Congress and the public with respect to the basis for particular decisions on import relief. Although current law provides for specific factors which the President must consider, the texts of statements explaining import relief decisions (particularly decisions denying import relief) shed little light on the extent to which these factors influenced the final decision. The Committee approved certain amendments to increase accountability of the decisionmaking process and of the decisions in import relief cases, and to provide greater public understanding of the basis for any particular import relief decision.

Transfer of Authority from President to USTR

Present law

Under current law, the President is responsible for making the decision of whether or not to provide import relief. The ITC conducts an investigation and makes certain findings and recommendations which must be reported to the President within six months of the petition. Within 60 days of receiving a report containing an affirmative determination from the ITC, the President is required to provide import relief, unless he determines that such relief is not in the national economic interest.

Explanation of provision

The bill transfers the decisionmaking authority from the President to the USTR. The ITC's report on its findings and recommendations would go directly to the USTR, who would then have 30 days (or 60 days in extraordinarily complicated cases) to determine whether, and to what extent, import relief is appropriate.

Reasons for change

This change is consistent with numerous other provisions of the bill which transfer the authority for making determinations and taking action under the trade laws to the U.S. Trade Representative. The purpose of these changes is to strengthen the role of the U.S. Trade Representative in being the chief official in the executive branch whose fundamental responsibility is to look after the international trade interests of the United States. This statutory change in decisionmaking responsibility is not meant to remove any Presidential power or to reduce the influence of the President in making trade decisions. The U.S. Trade Representative is, after all, an individual chosen by the President to act as the President's spokesperson and decisionmaker on trade policy. The Committee does not anticipate that the U.S. Trade Representative, who serves at the pleasure of President, will make decisions with which the President disagrees. The Committee does, however, have serious concerns about the degree of control and influence which other members of the Executive branch currently have over trade policy decisions made under current procedures. This statutory change is designed to ensure that there is one Administration official who is responsible for the coordination, determination and implementation of import relief decisions

Emergency Import Relief for Perishable Products

Present law

Under present law, there is no provision generally relating to emergency relief under section 201 for imports of perishable products. Statutory authorities for the Caribbean Basin Initiative (CBI) and the U.S.-Israel Free Trade Area (FTA), however, provide safeguard provisions for emergency relief from imports of perishable products from those countries under fast-track procedures.

Under both CBI (section 213(f) of the Caribbean Basin Economic Recovery Act) and the U.S.-Israel Free Trade Area (section 404 of the Trade and Tariff Act of 1984) petitioners for import relief with respect to perishable products may also file a request with the Secretary of Agriculture for emergency relief. Within 14 days the Secretary, after consultation with the USTR, must determine whether there is reason to believe that a perishable product from a CBI country or from Israel is being imported in such increased quantities as to be a substantial cause of serious injury to the domestic industry, and if so, whether emergency action is warranted. Within seven days after receiving the Secretary's recommendation, the President must determine whether to take emergency action. Relief consists of restoring the normal rate of duty on such perishable product pending final action on the import relief petition.

"Perishable" products, for purposes of CBI and the U.S.-Israel FTA are identified specifically in section 404(e) of the Trade and Tariff Act of 1984, and include certain live plants, vegetables, fresh mushrooms, edible nuts or fruits, fresh cut flowers, and concentrated citrus fruits.

Explanation of provision

The bill adds a new section 202 establishing fast-track procedures and authority to provide emergency relief from imports of perishable agricultural products during the course of an import relief proceeding under section 201.

The provision employs a three-step process for making emergency relief available. First, the Trade Representative must order the ITC to monitor a perishable product. Second, after 90 days monitoring, petitioners may include a request for emergency relief in a petition filed under section 201. The ITC must report its recommendations to the Trade Representative within 21 days of receiving a request for emergency relief. Third, following receipt of the Commission's report, the Trade Representative has 7 days in which to decide to grant relief or to deny it as contrary to the national economic interest.

Monitoring may be ordered only after the Trade Representative determines that the imported product is perishable and that there is a reasonable indication that the domestic industry producing a like or directly competitive perishable product is vulnerable to serious injury as a result of an increase in such imports.

Perishability is to be determined on the basis of the facts and circumstances in each case. The Trade Representative must consider whether the product has a short shelf life, short growing or marketing seasons, other legislative or administrative designations as perishable (such as under CBI or the U.S.-Israel free trade area), and other factors deemed relevant in making this decision. The absence of any of the specific factors for consideration is not dispositive of a product's perishability. It is expected, however, that the Trade Representative will give the specifically listed factors considerable weight in determining whether a product is deemed perishable under this provision.

The degree of perishability of the imported article need not, however, be the same as the degree of perishability of the domestically grown or produced article. For example, the Trade Representative may order monitoring of a chilled or frozen article which competes in the marketplace with a fresh article domestically grown or produced. The primary concern is whether such imports pose a risk of serious injury to domestic producers of a perishable article.

In order for monitoring to be ordered, there must be a reasonable indication that the domestic industry is vulnerable to serious injury as a result of increases in such imports. This test is intended to be a far less stringent standard than either the test applied by the Commission in deciding whether to recommend emergency relief or the test the Commission must apply in deciding whether to ultimately recommend relief on the 201 petition. If monitoring is ordered, the Commission must investigate and monitor imports for a period not to exceed two years. Monitoring shall include the collection and analysis of such information as would expedite an investigation under section 201. The Commission would be expected to inform the Trade Representative of the extent to which members of the industry were responsive to Commission request for information.

After a minimum of 90 days' monitoring, the domestic industry may file a section 201 petition which includes a request for emergency action. If such a request is made, the Commission has 21 days in which to decide whether to recommend emergency action. The Commission's decision would be based on the most reliable and probative information available, including that obtained during the monitoring process.

The Commission shall recommend emergency relief if it finds three conditions are met: (1) there is an increase (either actual or relative to domestic production) in such imports of a perishable agricultural product as to be a substantial cause of serious injury, or the threat thereof, to a domestic industry producing a like or directly competitive product; (2) the serious injury is likely to be difficult to repair by reason of the perishability of the like or directly competitive agricultural product of the domestic industry; and (3) the serious injury cannot otherwise be prevented by an investigation under the normal time periods for escape clause action. In determining whether injury is difficult to repair by reason of perishability, the Commission should consider factors normally considered in an injury analysis in relation to the perishable nature of the domestic product (e.g., short shelf life or marketing season).

These criteria are designed to identify emergency situations where a normal section 201 would be ineffective for a perishable agricultural product industry and fast track preliminary relief is appropriate. Since the inquiry would be conducted on an expedited basis, the ITC would make its finding on the basis of the most reliable and probative information available to the Commission, given the time constraints of a perishable's inquiry.

If the ITC made a negative fast track finding, it would continue with a normal investigation under section 201 and make a normal injury determination within four months of the petition. The preliminary fast track finding would not be treated as dispositive, since additional evidence could be developed in the course of a full inquiry by the ITC.

If the Commission finds that the injury criteria have been met, it would be required to recommend appropriate import relief to the USTR. The ITC would give preference to a tariff increase if tariff relief is feasible and would eliminate the injury to the domestic industry. Tariff relief is especially appropriate in an emergency relief situation, since it can be refunded if the ITC later finds that the industry is not seriously injured or the USTR eventually decides not to grant relief. The possibility of a refund allows a partial return to the original status quo if relief is eventually found to be inappropriate.

Within seven days of receiving an affirmative ITC recommendation, the Trade Representative would provide emergency relief unless he determines that such relief is not in the national economic interest. While the Trade Representative must take the ITC's recommendation into account, he may choose to grant a different amount or type of import relief than that recommended by the Commisssion.

If the Trade Representative does decide to provide relief, he may proclaim any import relief authorized under section 206(a)(3). Alternatively, the Trade Representative may order the suspension of liquidation of articles entered or withdrawn from the warehouse after the date or the determination and may also order the posting of a cash deposit, bond, or other security in amounts he considers appropriate. The suspension of liquidation is a flexible remedy that is particularly appropriate in an emergency situation where a full investigation is still underway. If the ITC eventually finds that the industry is not injured or the USTR decides to deny import relief under section 204, the cash deposit, security, or bond can be refunded to the importer. This minimizes the disruptive effect of the emergency relief and is likely to reduce foreign demands for compensation.

Emergency relief terminates under these provisions on the date on which the Commission reports that it did not find serious injury or threat thereof, the denial or import relief for the industry becomes final or import relief for the industry first takes effect under section 203 (except that the Trade Representative may terminate emergency relief whenever he determines that action is no longer warranted). If emergency import relief is terminated, any suspension or liquidation order shall be promptly terminated, any bond or security shall be released and any cash deposit shall be refunded.

In addition to fast-track emergency relief in section 201 proceedings, the bill makes conforming amendments to the fast-track provisions under CBI and the U.S.-Israel Free Trade Area agreement to transfer the override authority under those statutes from the President to the USTR.

Reasons for change

Producers of perishable agricultural products are particularly vulnerable to sudden and unexpected surges in imports. A perishable commodity must be marketed within a short period of time, since it rapidly becomes inedible. Accordingly, producers of a perishable commodity, more than producers of other goods, must receive import relief in a short period of time if such relief is to be effective. The perishability of certain agricultural products makes such industries highly sensitive to sudden surges in imports.

The Committee has concluded that some segments of domestic agriculture require relief on a faster timetable than is available under current law. The Committee also recognizes, however, that current U.S. international obligations require that certain determinations must be made before action can be taken. The Committee considers the mechanism provided by the new section 202 for providing interim relief to adapt U.S. escape clause actions to the needs of agriculture and to comply with U.S. international obligations.

Provisional Import Relief if Critical Circumstances Exist

Present law

No provision.

Explanation of provision

The bill adds a new provision for petitioners to request provisional import relief on the basis of critical circumstances. If the petition alleges critical circumstances, then ITC must determine at the same time as its injury determination (within four months of petition) whether critical circumstances exist. If ITC makes an affirmative determination with respect to both injury and critical circumstances, then it shall order immediate suspension of liquidation of all entries of the merchandise under investigation, and may order the posting of a bond or cash deposit. If USTR determines within seven days that provisional relief is not in the national economic interest, then it can overturn the suspension of liquidation.

If the suspension of liquidation remains in effect, then any import relief provided by USTR must be retroactively applied to the date of initial suspension of liquidation. If the USTR decides not to provide import relief, then the suspension of liquidation shall be terminated and any cash deposit, bond, or other security shall be returned.

Under this provision, critical circumstances exist when a substantial increase (absolutely or relatively) in the quantity of an article being imported into the United States over a relatively short period of time has led to circumstances in which a delay in the taking effect of import relief would cause harm that would significantly impair the effectiveness of such import relief.

Reasons for change

The bill adds a new provision for industries in which critical circumstances exist to obtain provisional import relief pending the outcome of a section 201 proceeding. In adopting this new provision, the Committee recognizes that in certain situations the injury caused by increased import competition may be so severe or so pervasive that not imposing any relief until the end of the import relief proceeding (seven or eight months after the filing of the petition) may impair the effectiveness of the import relief in remedying the serious injury. This may occur because at that later point in time the harm to the industry will have become irreparable or difficult to repair, or because the injury which continues to occur during the pendency of the proceeding will significantly impair the effectiveness of the import relief ultimately provided.

Critical circumstances may also occur when there are surges of imports, as foreign exporters and U.S. importers attempt to rush as many imports as possible into the United States before import relief is made effective. In their efforts to "beat" imposition of relief, they can seriously aggravate the injury which has already occurred.

In these situations, the provision of import relief at an earlier point in time (prior to the statutory limit for the USTR determination) will serve to alleviate the continuing serious injury to the domestic industry and preserve the status quo while the ITC and the USTR are considering remedy issues. The bill thus provides for the suspension of liquidation and possible posting of a bond, cash deposit or other security at four months from the filing of petition. If provisional relief remains in effect, and if the USTR subsequently provides import relief, the relief would be applied retroactively to the date when suspension of liquidation began.

The form of action which is authorized in cases involving critical circumstances is suspension of liquidation and potential retroactivity of any final import relief. This is to ensure the effectiveness of any import relief ultimately provided, without subjecting imports which are subsequently found not to be causing serious injury to arbitrary, unwarranted tariffs or quotas.

The Committee considers that this provision is fully consistent with GATT Article XIX, since it requires a finding of serious injury by the ITC. While the Committee recognizes that preliminary relief could generate compensation claims, the suspension of liquidation remedy will minimize the disruption of trade. The potential for compensation claims will be taken into account by the USTR.

Statement of Proposed Adjustment Measures

Present law

Under present law, a petition for import relief must include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition. There is no requirement, however, to specify what steps the domestic industry may or intends to take to achieve such objectives.

Explanation of provison

The bill as amended by the Committee adds a new provision which allows a petitioner to submit a statement of proposed adjustment measures either with the petition or at any time within 120 days of filing the petition. Such statement should include, to the extent practicable:

(a) an assessment of the current problems affecting the domestic industry's ability to compete with imports;

(b) recommendations regarding the types of actions that both workers and firms within the industry could undertake during a period of import relief—

(i) to improve the ability of the industry to compete on its own after such relief terminates or

(ii) if long-term competitiveness is not the primary objective, to facilitate orderly adjustment to increased import competition;

(c) recommendations regarding the types of actions that Federal agencies could take to assist the efforts of the domestic industry either to enhance its competitiveness or to adjust to import competition; and

(d) an explanation as to how import relief will assist the industry in enhancing competitiveness or achieving adjustment.

Furthermore, a petitioner would be provided an opportunity, prior to submitting such a statement, to consult with the USTR, other Federal government officials, and other members of the domestic industry with respect to recommendations likely to be included in the statement. If a petitioner requests such consultations, USTR must provide adequate notice to interested parties by means of publication in the Federal Register. An official from the office of the USTR must be in attendance for any consultation to occur.

The Committee intends that this provision will provide the opportunity for an interactive process to take place between the petitioner, appropriate government officials, and other members of the domestic industry who desire to participate, to consider the adequacy of the proposed statement of adjustment measures in the context of any relief which might be provided. By encouraging the submission of a statement of proposed adjustment measures, and by providing the opportunity to discuss the proposed adjustment measures with the USTR and other government officials, the Committee intends to encourage greater focus on opportunities for positive adjustment. Specifically, the Committee intends that when temporary import protection is given to a domestic industry that has been seriously injured by imports, it should result whenever possible in a more internationally competitive industry.

The statement of proposed adjustment measures addresses issues and recommends actions with respect to the industry as a whole. A provision for the submission of confidential information on adjustment measures by individual members of the industry is meant to allow the exchange of information on specific actions firms or unions intend to undertake if relief is provided. Firms cannot be expected to make public their confidential investment or restructuring plans. On the other hand, it is useful for the ITC and the USTR, in making their relief determinations, to have specific information on actions firms intend to undertake. Requiring strict confidentiality of submissions on intended actions by individual firms or unions protects the interests of the individual members of the industry, while providing the ITC and the USTR adequate information to make a properly informed relief decision.

During the Committee's deliberations, certain concerns were raised regarding potential antitrust problems as a result of the consultation mechanism. The Committee does not intend for the consultation provision to grant a license to members of the domestic industry to engage in any discussions or share any information which would otherwise violate U.S. antitrust laws. The function of the consultation is to provide an opportunity to discuss with the

USTR proposed adjustment measures, not to share confidential pricing information or to organize a cartel. Any company-specific actions and plans would be provided by firms and unions on a confidential basis to the ITC.

In addition to objectives and steps which workers and firms could undertake to improve competitiveness or assist adjustment, the statement of proposed adjustment measures should also include recommendations of actions which the Federal government can take, either under existing authority or by new legislation, to assist in achieving such objectives. The role of the Federal government in facilitating the adjustment process is an important and integral one. Depending on the circumstances of the particular industry, certain actions by the Federal government not specifically aimed at regulation of imports may nevertheless assist the industry's efforts to compete more effectively with imports. For example, temporary relaxation of certain administrative standards or regulations, or increased government purchases of a product for U.S. stockpiles, might be appropriate and useful actions. The statement may recommend such actions, even though they are not directly related to imports. Any such actions recommended are not meant to be binding on the Federal government or any government agency, but should be seriously considered by the USTR and other relevant officials.

A statement of proposed adjustment measures, if submitted, must be submitted to both the ITC and the USTR. The bill requires the ITC to take this statement, as well as any confidential submissions, into account in determining what relief shall be most *effective* in remedying the serious injury and in facilitating efforts by the domestic industry to enhance its competitiveness or to adjust to import competition. In making such determination, the ITC must consider the extent to which import relief, in conjunction with proposed actions by the domestic industry (as specified in the statement of proposed adjustment measures and as indicated in confidential submissions) is likely to enhance competitiveness or otherwise facilitate adjustment.

Finally, when the USTR is deciding whether, and to what extent, to provide import relief, it must similarly consider the proposed adjustment measures and the confidential submissions, if any. Moreover, the Committee expects that if a petitioner did submit a statement on proposed adjustment measures, the USTR would also, at this stage of the proceeding, engage in an earnest dialogue with the domestic industry concerning what commitments, if any, the industry would be willing to make if relief were provided. Although such a discussion presumably would have occurred during consultations prior to submission of an adjustment statement, the final stage of the proceeding in which the USTR is deciding on import relief would be subsequent to an affirmative injury determination. Given the fact that the domestic industry would have met at that point the statutory standard for qualifying for import relief, more members of the domestic industry may be willing to commit to positive measures towards adjustment.

Reasons for change

One of the fundamental concerns of the Committee in considering amendments to section 201 has been to improve the effectiveness of the escape clause in promoting, not merely allowing, adjustment. By explicitly providing a statutory mechanism for submission of a statement of proposed adjustment measures and for consultations with the USTR regarding such measures, the Committee intends to encourage domestic industries who petition for import relief to take a more active role towards positive adjustment.

Some industries in the United States can only avoid continuing injury from import competition by undertaking significant actions to enhance competitiveness or to otherwise adjust to new methods of competition. One of the purposes of the consultations provided for in this section is to help ensure that the proposed adjustment measures, in conjunction with the import relief being requested, will be effective in facilitating efforts by the domestic industry to enhance its long-term competitiveness. The consultations can provide the petitioner with valuable advice from other members of the domestic industry, if any, as well as from the USTR and other appropriate government officials before the statement of proposed adjustment measures must be submitted. Such advice will allow the petitioner the opportunity to modify and improve upon the proposed adjustment measures with respect to their feasibility and their adequacy in light of the import relief being requested. The consultations should also prove useful with respect to the quality of any confidential submissions made by individual members of the industry.

ITC Injury Determination

Present law

Under present law, the ITC must report its findings with respect to injury and its recommendations with respect to relief within six months of the petition.

In determining whether the increased imports are a substantial cause of serious injury or threat thereof to the domestic industry, the ITC is required to consider a number of factors. In determining the "domestic industry" producing an article like or directly competitive with an imported article, the ITC—

(a) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(b) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivison of the producer which produces the like or directly competitive article; and

(c) may, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

In making its injury determination, the ITC must take into account all economic factors which it considers relevant, including but not limited to—

(a) with respect to "serious injury", the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and signficant unemployment or underemployment within the industry;

(b) with respect to "threat of serious injury", a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned; and

(c) with respect to "substantial cause", an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

The term "substantial cause" is defined as a cause which is important and not less than any other cause.

Explanation of provision

1. *Deadlines.* The bill sets separate deadlines for the ITC's determinations of injury and of remedy. The bill as amended establishes a new deadline of four months for the ITC to determine whether increased imports are a substantial cause of serious injury, or threat thereof, to a domestic industry. At such time, the ITC would also determine whether critical circumstances exist, if the petition so alleges. The new deadline is intended to ensure full and adequate consideration for the ITC's relief recommendation. In the Committee's judgment, this may require more time than has been given to such issues in the past.

2. *Domestic industry.* In determining the "domestic industry", the bill requires the ITC, to the extent information is available, to treat as part of the domestic industry only domestic production of domestic producers, and only that portion of the domestic producer that produces the like or directly competitive product. This provision, which is discretionary under current law, is changed to mandatory, to the extent information is available to make such distinctions.

3. *Injury factors.* The bill further clarifies that, in considering the inability of a significant number of firms to operate at a reasonable level of profit, the ITC consider only the operations related to domestic production. Profits of a firm, such as a multinational corporation, generated by its offshore production operations or U.S. import operations are not relevant to a determination of serious injury.

In determining whether there is a threat of serious injury, the bill adds three additional factors to be considered by ITC: (1) a decrease in market share; (2) the extent to which the U.S. market is a focal point for diversion of foreign exports; and (3) the inability of producers in the domestic industry to generate adequate capital to finance the modernization of domestic plants and equipment.

A decrease in market share is relevant because it may signal a trend of imports taking away market opportunities from domestic producers. Diversion of foreign product to the U.S. market is relevant because it may indicate increased pressure for foreign products to enter the U.S. market. The inability of domestic producers to generate adequate capital to finance modernization is an important factor, particularly for industries which rely on large or frequent capital infusions to remain competitive. In evaluating this factor, the ITC should focus on the commercial availability of capital, efforts by the industry to raise capital in capital markets or, if the industry has historically financed improvements out of earnings, the effect of recent declines in industry profitability on the ability of firms to pay for necessary modernization. It is the Committee's intention that the ITC focus on recent declines in the industry's ability to raise capital, e.g., over a three-to-five year period, since these trends generally are the most probative evidence of threat. While the ITC must evaluate the industry's inability to raise capital as a threat factor, it is not the Committee's intention that a *mere allegation* of such inability be treated as evidence of threat. Instead, the Commission should look to *actual efforts* by the industry and the success or failure of those efforts.

4. *Substantial cause.* The bill also clarifies that, for purposes of determining whether increased imports are a substantial cause of serious injury to a domestic industry or a threat thereof, the Commission should consider the condition of the industry over the course of the relevant business cycle and shall not aggregate the causes of declining demand associated with a recession or economic downturn into a single cause of serious injury. This particular change is intended to clarify that import relief should be available during a recession or economic downturn. The amendment would not preclude the Commission from considering the effects of a recession, but instead would direct the Commission to treat a recession as a set of separate and distinct causal factors, rather than a single factor. Accordingly, the Commission could examine declines in demand associated with a recession as part of its analysis of whether imports are a substantial cause of "serious injury," but would not aggregate the different causes of declining demand—such as high interest rates, unemployment, reduced business investment and higher energy costs—if related to a recession, into a single cause of injury.

The Commission would also consider the effects of a recession as part of its analysis of the condition of an industry over the full course of its business cycle. For example, if the industry is experiencing a normal decline in output and demand over the course of its business cycle, this could be evidence that imports are not the substantial cause of injury and that an economic recovery will restore the industry to health. If, on the other hand, the decline is much more pronounced than would normally occur in a cyclical downturn, the industry may be suffering serious injury as a result of imports.

5. *Seasonal products.* The bill adds a special provision that, in cases involving imports of seasonal agricultural products, the ITC

may find serious injury or threat thereof when the increased imports are largely entering during a specific period or season of the year and are largely impacting only those domestic producers harvesting or marketing during that season or period of year. In applying this new provision, the ITC should continue to examine historical trends in imports and industry conditions, but should do so in the context of the seasonal nature of the product.

In adopting this provision, the Committee recognizes that many agricultural crops are seasonal in nature. Circumstances of climate and geography cause harvesting and marketing of certain agricultural products to occur during specific seasons or periods of the year. When imports of such a seasonal product enter the U.S. market during the same season or period as the domestic product is being harvested or marketed, those imports have a direct impact on those domestic producers at that point in time. For example, imports of a certain winter vegetable largely impact only domestic producers of such winter vegetable. Domestic producers of the summer vegetable may be a wholly different group of growers and producers from domestic producers of the winter vegetable. As such, increased imports of the winter vegetable will largely impact only those domestic producers of that winter vegetable. If the imports compete with the domestic product during the same season or period, and largely impact only those domestic producers, then it is the view of the Committee that the ITC should clearly be able to make an affirmative injury determination in a section 201 proceeding. The Committee does not believe domestic producers of seasonal agricultural products should be precluded from import relief due to the seasonal nature of their product.

In investigations involving seasonal agricultural products, any relief determination by the ITC or the USTR must take the seasonal nature of such imports into account. For example, an appropriate remedy in such cases might be imposition of a tariff only during the season or period of the year in which seasonal injury occurs.

6. *Geographically isolated markets.* The bill as amended also adds a new provision relating to injury determinations when there are geographically isolated markets in the United States which rely predominantly on imports to supply its demand. A "geographically isolated market" is defined as one in which—

(a) producers located within such market have not supplied demand in that market to any substantial degree in the most recent representative period, and there is no reasonable likelihood that they will do so in the future;

(b) producers have made no significant effort as measured by capital investments in plant and equipment, or in distribution and marketing, within a reasonably recent period, to meet demand in that market, and there is no reasonable likelihood that they will do so in the future; and

(c) producers located outside the area have not historically met demand within the region at prices reasonably equivalent to prices prevailing elsewhere in the United States because of transportation, insurance or other costs which would be incurred to ship the product to or market the product in the geographically isolated market."

In making its injury determination, the ITC would be able, in appropriate circumstances, to disregard quantities of the article which are imported into a geographically isolated market. In approving this provision, the Committee recognizes that certain quantities of imports may supply a particular geographic market because there is essentially no domestic source of supply available to that market. This may occur, for example, because of prohibitive costs of transporting the product into the geographic market from domestic production facilities. If domestic producers have made no significant effort to compete in that market, and there is no reasonable likelihood that they will in the near future, then such imports into that geographically isolated market cannot reasonably be considered to be causing injury to the domestic industry.

The Committee does not intend, however, for this provision to be applied when the geographic market relies on imports simply because imports are priced lower than domestically produced goods. Nor does the Committee intend the provision to be applied when imports have dominated the market as a result of predatory pricing practices. A necessary key factor as to why domestic goods have not and are not supplying such market is in the third criterion: "because of transportion, insurance or other costs which would be incurred to ship the product to or market the product in the geographically isolated market".

This provision allows the ITC, when all three criteria are met, to disregard those quantities of imports into such geographically isolated market, and base its injury analysis on the volume, prices, and impact of imports which supply the rest of the country, in which domestic producers compete with imports. If the ITC makes an affirmative injury determination in a case involving a geographically isolated market, it is further required to take its existence into account in its remedy recommendation. The remedy recommendation should, to the extent practicable, balance the interests of the geographically isolated market in maintaining its source of supply with the interests of the domestic industry in obtaining effective import relief. Such a balance might be accomplished, for example, by negotiation of orderly marketing agreements with relevant countries.

Reasons for change

In general, the changes related to the ITC's injury analysis were approved to clarify and expand the existing standards for ITC's injury determination. Several of the changes are designed to increase the Commission's focus on *domestic production* operations—not offshore operations or import operations. The provisions relating to seasonal products and geographically isolated markets demonstrate the Committee's sensitivity to the need for import relief standards to make sense in their application to market realities.

The provision relating to the "substantial cause" standard is intended to improve access to import relief during a recession or downturn. In the past, certain Commissioners have interpreted the substantial cause requirement in a way that precludes import relief during a recession or downturn in the business cycle. It is the intent of the Committee that such an interpretation is inappropriate and should be legislatively overturned.

For example, in a 1980 investigation under section 201 of *Certain Motor Vehicles and Certain Chassis and Bodies Therefor,* several Commissioners treated an economic downturn as a single cause of injury. After finding that this downturn was the most important cause of the declining condition of the U.S. automobile industry, they determined that imports were not a substantial cause of serious injury. This interpretation makes it virtually impossible to obtain section 201 relief during a recession. Yet, it is during a period of recession that an industry is most vulnerable to a surge in import competition.

The bill would clarify that a recession per se should not be treated as a single cause of injury. The amendment will ensure that import relief is not more difficult to obtain in a recession than during a period of economic prosperity. This clarification should provide major benefits to industries experiencing difficulties during an economic downturn.

It has come to the attention of the Committee that certain Commissioners interpret section 201 to require an *actual* increase in imports in all cases. Upon a review of the provisions of current law, the Committee has concluded, and would like to affirm its intent that the statutory criteria under section 201 is met by either an actual or a relative increase in imports, in accordance with Article XIX of GATT.

Trade Adjustment Assistance

Present law

Under current law, if the ITC recommends import relief, the President must evaluate the extent to which trade adjustment assistance (TAA) has been made available to workers and firms in the industry, and may direct the Secretaries of Labor and Commerce to expedite consideration of petitions for TAA.

If the ITC determines that the provision of TAA alone can effectively remedy the injury and thus recommends TAA instead of import relief, then the President is required to direct the Secretaries of Labor and Commerce to expedite consideration of petitions for TAA.

Explanation of provision

The bill (both section 131 and corresponding changes in section 145) provides that an affirmative finding of serious injury by the ITC shall automatically qualify workers and firms within the seriously injured industry as eligible to apply for TAA, regardless of USTR's ultimate decision on import relief.

Within 48 hours of an affirmative injury determination, the ITC must notify the Secretaries of Labor and Commerce of such determination, and identify the relevant injured industry, firms, and articles produced, defined in detail in terms of Standard Industrial Classification. All petitions for eligibility for TAA from workers and firms within the scope of the ITC injury determination filed within three years of such determination would be automatically certified.

Reasons for change

It is the view of the Committee that trade adjustment assistance should always be available to workers and firms who are adversely affected by imports, and therefore designating the provision of trade adjustment assistance as an optional form of relief, instead of tariffs or quotas, is inappropriate. The bill thus removes trade adjustment assistance from the options which the ITC can recommend to the USTR, and from the actions which USTR can take.

This change should not, however, be interpreted to mean that the provision of trade adjustment assistance is not meaningful in the context of section 201 relief. To the contrary, the Committee considers the provision of trade adjustment assistance to be an important and necessary tool for any industry seriously injured by imports, regardless of whether the USTR decides import relief is or is not in the national economic interest. Accordingly, the bill further requires that all petitions for eligibility for trade adjustment assistance from workers and firms in an industry which has been found by the ITC to be seriously injured by imports are to be automatically certified. This change reflects the view of the Committee that the prompt provision of trade adjustment assistance is imperative to a successful adjustment process.

ITC Remedy Recommendation

Present law

Under present law, the ITC must report its findings and recommendations to the President within six months of the petition. If the ITC finds that increased imports are a substantial cause of serious injury or threat thereof, it must then find the amount of the increase in, or imposition of, any duty or import restriction which is necessary to prevent or remedy the serious injury. If, however, the ITC determines that trade adjustment assistance can effectively remedy such injury, it shall recommend the provision of trade adjustment assistance.

In determining what form of import relief to recommend, the ITC can effectively choose either a tariff, a tariff-rate quota, or a quantitative restriction.

Explanation of provision

1. *Remedy standard.* Under the bill as amended, the ITC would be required to make a determination on remedy within 2 months of its injury determination. If the ITC makes an affirmative injury determination, it shall then determine what form and amount of relief shall be—

(a) most effective to prevent or remedy the serious injury and facilitate efforts by the domestic industry to enhance its long-term competitiveness; or

(b) if the ITC finds that import relief may not necessarily facilitate competitiveness efforts, it determines what form and amount of relief would prevent or remedy the serious injury.

In determining what form and amount of import relief is appropriate the ITC would be required to consider each of the following factors:

(a) the form and amount of import relief which will prevent or remedy the serious injury;

(b) the extent to which import relief in conjunction with actions by the domestic industry (as identified in the statement on proposed adjustment measures and in individual confidential submissions to the ITC) are likely to enhance the long-term competitiveness of the domestic industry or otherwise facilitate adjustment;

(c) the current competitive position of the domestic industry in U.S. and world markets;

(d) the trends in conditions of competition (U.S. and global) that are likely to continue in this sector; and

(e) the role of this particular industry in the national economy, including its importance to U.S. national economic security.

The bill provides a new formulation of the standard for ITC's remedy recommendation. The two-pronged standard is designed to allow for greater flexibility and responsiveness in shaping a remedy that will not only prevent or remedy the serious injury but also facilitate adjustment. As stated elsewhere, the Committee's primary concern in amending the escape clause is to improve the effectiveness of escape clause actions in promoting positive adjustment. If a domestic industry which is seriously injured by imports has indicated, through submission of a statement of proposed adjustment measures and/or confidential submissions by individual firms and unions, that there are significant opportunities for enhancing that industry's competitiveness during a period of import relief, then the ITC should shape a relief recommendation that is the *most effective* to prevent or remedy the serious injury *and* facilitate the domestic industry's efforts to enhance its competitiveness. Such a recommendation might, for example, be based on quotas rather than tariffs, if quotas would provide more effective relief.

On the other hand, if there is no reason to believe that import relief will assist the domestic industry in becoming competitive with imports, but the industry is being overwhelmed by import competition, then the Committee does not intend that such an industry be precluded from import relief. In such a case, the ITC should recommend whatever relief will prevent or remedy the injury. Provision of import relief in those situations might serve the useful purpose of easing the declining position of the industry and preventing massive, rapid dislocations in that sector.

The bill provides for new factors for the ITC to consider in its remedy recommendation relating to competitiveness conditions and the role of the industry in the national economy. This requirement is designed to expand the scope of the ITC's analysis and consider the industry in the context of its competitiveness vis-a-vis foreign industries in global markets, and prospects for its future competitiveness given likely trends in that industry (such as leap-frog technologies or newly emerging competitors). Such factors, the Committee feels, are relevant in identifying what type and amount of import relief may be most effective to facilitate efforts towards long-term competitiveness.

2. *Remedy options.* In determining what type of import relief to recommend, ITC would be authorized to recommend any of the following:

(a) tariff increase;
(b) tariff-rate quota;
(c) quantitative restriction;
(d) negotiation of orderly marketing agreements; or
(e) any combination of the above.

The bill thus expands the remedy options available for ITC recommendations to include negotiation of orderly marketing agreements (OMAs) and any combination of actions. There may be situations in which negotiation of OMAs is the most appropriate form of relief—for example, if there have been massive increases in imports from only one country. It is the intent of the Committee that the ITC should have the flexibility in every case to recommend the most appropriate form of import relief for that industry.

If the ITC recommends a quantitative restriction, the recommendation shall be to administer it by means of public auction of import licenses, unless the ITC finds that such auction system would lead to undesirable economic results. This provision essentially establishes a presumption in favor of auctioned quotas, but does not mandate their recommendation (or their implementation by USTR) under all circumstances. One example of "undesirable economic results" would be monopolization of market power by either foreign suppliers or U.S. importers. In situations where the auction system itself would lead to such monopoly power, because one entity is likely to purchase all the licenses and then exert undue power over market prices, the Committee would exoect that auctioned quotas would not be appropriate. Or, if the merchandise is traded in a manner that is not conducive to the administration of an auctioned quota, and such a requirement would seriously disrupt the market, then an auctioned quota might not be appropriate. The Committee expects the ITC to consider the facts and circumstances of each industry, and to recommend auctioned quotas unless there are sound economic reasons not to do so.

Reasons for change

The amendments relating to the ITC remedy recommendation are meant to improve the Commission's ability to recommend the best possible remedy in any given import relief proceeding. The Committee believes that to do so the ITC must not consider the industry's condition in a vacuum, but rather in the broader context of competitive conditions in U.S. and global markets, both today and in the foreseeable future.

The Committee has paid considerable attention over the past year-and-a-half, to proposals relating to auctioned quotas. Some of these proposals are broad-brush approaches to the subject, which would apply both to existing and future quotas, and would require tariff conversion and eventual elimination of trade protection. The Committee is not yet prepared to embrace such a comprehensive scheme. The Committee does feel, however, that application of the auctioned quota concept in the context of section 201 proceedings makes sense and therefore would like to encourage their consideration. Recognizing that there may be certain circumstances in which an auctioned quota would be harmful in economic sense but a (nonauctioned) quota would not, the Committee provides for their limited recommendation.

ITC Estimate of Effects of Import Relief Recommended

Present law

In determining whether to provide import relief, and the form and amount of import relief, the President is required to take into account the effect of import relief on consumers (including the price and availability of the imported article and the domestically produced article) and on competition in the domestic markets for such articles. The President is also required to consider the economic and social costs which would be incurred by taxpayers, communities, and workers, if relief were or were not provided.

There is no provision, however, under current law for the ITC to estimate the economic effects of relief or provide input to the President's consideration of such effects.

Explanation of provision

In its report to the USTR, the ITC would be required to estimate the effect of the import relief which it recommended as follows:

(a) the effects (either costs or benefits or both) of the relief (1) on consumers of the imported product and consumers of the product generally, and (2) on other sectors of the U.S. economy; and

(b) the economic or social costs or benefits of the relief on taxpayers, communities, and workers which would likely result if relief were or were not provided.

The USTR, in taking these factors into account in its import relief determination, would be required to consider and give weight to the ITC estimate of these effects with respect to the recommended relief.

Reasons for change

Under current law, the effects of import relief on consumers, domestic competition, taxpayers, communities and workers are required to be taken into account in any determination, and are often cited by the President as a reason for denial of import relief. The nature and extent of such effects, however, as they were taken into account by the President, are often unclear from a reading of Presidential determinations. The bill would require the ITC, when it recommends relief to the USTR, to estimate the effects of that particular import relief on consumers, on other sectors of the U.S. economy and on taxpayers, communities and workers. This would allow an impartial economic analysis to be publicly available and to provide a basis for the USTR determination of whether or not to provide import relief.

USTR Import Relief Determination

Present law

Under present law, the President is required to provide import relief within 60 days of receiving an affirmative determination from the ITC, unless the President determines that relief is not in the national economic interest. The President must report to Congress on his determination and action in determining whether to provide import relief and what method and amount the import relief should be. Current law directs the President to take into account, among other relevant factors, the following nine factors:

(a) advice from the Secretary of Labor on the extent to which workers in the industry have applied for, or are likely to receive, adjustment assistance;

(b) advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, or are likely to receive, adjustment assistance;

(c) the probable effectiveness of import relief in promoting adjustment, and efforts being made, or to be implemented by the industry to adjust to import competition;

(d) the effect of import relief on consumers and on domestic competition;

(e) the effect of import relief on the international economic interests of the country;

(f) the impact on U.S. industries as a consequence of our trading partners' right to compensation;

(g) the geographic concentration of the imported products marketed in the United States;

(h) the extent to which the United States market is the focal point for exports of such articles by reason of restraints on exports of such articles to, or imports of such articles into, third country markets; and

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

If the President decides to provide import relief, he may take any of the following actions:

(a) proclaim a tariff increase;

(b) proclaim a tariff-rate quota;

(c) proclaim a quantitative restriction;

(d) negotiate, conclude, and carry out orderly marketing agreements; or

(e) take any combination of such actions.

Explanation of provision

Under the bill as amended, within 30 days of the ITC report (60 days if USTR considers it an extraordinarily complicated case), the USTR must provide import relief to the extent that, and for such time as, the USTR determines necessary to prevent or remedy the serious injury and to facilitate adjustment, unless the USTR determines one of the following:

(a) the provision of any import relief would threaten our national security; or

(b) the economic costs of providing any import relief are so great that they outweigh the economic and social benefits of facilitating adjustment in this domestic industry through the provision of import relief.

The bill provides a more precise standard than current law does for the denial of import relief after there has been an affirmative determination of serious injury. Current law authorizes the President to deny import relief only if he determines that relief is "not in the national economic interest." There is, however, no definition, or even clear standard for determining what constitutes "national economic interest." The Committee's provision is an attempt to clarify the concept of "national economic interest" in the context of import relief decisions.

The first part of the test reflects the Committee's concern that, if the imposition of any import relief (no matter what type or what amount) will threaten national security, then relief need not be provided. Clearly, an impairment of our national security is not in the national economic interest.

The second part of the test expresses the cost benefit analysis in which USTR must balance the costs and benefits of a relief decision on different segments of the national economy. If the costs of relief—to consumers, other sectors, including agriculture, taxpayers, communities—are so overwhelming that they outweigh the benefits of providing relief—to those particular domestic producers, those workers, taxpayers, communities—then USTR may deny any import relief. USTR cannot, however, deny import relief simply because to do so would incur *some* costs; those costs must be weighed against the benefits of providing relief to all who would so benefit.

In determining whether to provide relief, and what form and amount of relief, the USTR would consider essentially the same set of factors which the President is now required to consider. The bill adds, however, an additional factor to be considered, which is "the impact of import relief on agricultural exports."

The USTR shall give weight to the estimates of economic costs and benefits provided by ITC in its report. The USTR may not, however, re-examine or question the validity of issues relating to injury which have already been determined by ITC.

In addition to, or instead of, the existing remedy options, USTR may initiate international negotiations to address the underlying cause of the particular import problem (such as global oversupply). The Committee, in providing for this new remedy option, recognizes that in certain situations, unilateral action may be inappropriate or insufficient to provide effective relief. Bilateral or multilateral negotiations may be a more effective means of addressing certain problems, such as excess global capacity in a particular commodity. The bill expands the list of actions which the USTR can take to include international negotiations in addition to, or in lieu of, import relief. The Committee does not intend for the USTR to use this provision, however, as an easy means of neglecting import relief measures when import relief is an appropriate remedy. It is the intent of the Committee that this negotiating option be used as a supplement to import relief measures, or in lieu of import relief when import relief is clearly inappropriate.

If the USTR decides to initiate negotiations in lieu of import relief, the USTR must report such decision to the Congress, and must identify a deadline for successful completion of the negotiations (*e.g.*, six months; two years; *etc.*). That decision (including the self-imposed time deadline) would be treated as a normal import relief determination for purposes of Congressional override procedures. If the decision to negotiate is not overridden, then the USTR would have the time period identified in the decision in which to initiate, conduct, and conclude negotiations. If, at the end of the negotiating period, the USTR determines that the negotiations were not successful, he may then take any action he was authorized to take at the time the decision to negotiate was made—i.e., he may then provide import relief to the domestic industry. This particular provision is designed to preserve the opportunity to impose import relief if international negotiations are not successful in providing relief to the domestic industry.

If the USTR decides after receiving the ITC recommendation, to deny relief, or to provide relief which differs in either form or amount from the ITC recommendation, he must submit, along with the decision, a detailed explanation for such difference. By a "detailed explanation," the Committee means a substantive economic analysis of approximately the same level of detail as usually contained in the ITC report. If the form of relief differs from the ITC recommendation, the USTR must justify its decision to change the form of relief. If the amount of relief differs, the USTR must also account for such difference. The Committee expects the explanation to reflect the analysis and rationale behind the decision to provide relief which is different from the ITC recommendation, or to deny relief, as appropriate. Such explanation must also account for how any relief provided facilitates efforts by the domestic industry to enhance its long-term competitiveness.

Reasons for change

The changes made by the bill concerning the USTR determination of import relief are generally designed to increase accountability of the decisionmaking process in section 201 proceedings. The Committee feels that the existing standard of "national economic interest" is in need of clarification for purposes of import relief decisions. Furthermore, the analysis of the required factors and the specific reasons for a particular decision are often obscured in general statements made by the President under the current import relief statute. The Committee strongly believes that the decisionmaker has an obligation to provide the Congress and the public with a detailed explanation which reveals the decisionmaker's analysis and justifies its decision.

Monitoring and Periodic Review by ITC

Present law

So long as any import relief remains in effect, the ITC is required to keep under review developments with respect to the industry concerned, including the progress and efforts made by firms in the industry to adjust to import competition. Upon request of the President, the ITC shall make reports to the President concerning such developments.

Explanation of provision

During the period of relief granted, the ITC would be required to monitor the progress and efforts made by firms in the domestic industry to adjust to import competition and to monitor conditions of competition in the industry, and to report annually thereon to both the Congress and to the USTR.

Reasons for change

If section 201 import relief is to become a more effective tool for adjustment, domestic industries seeking temporary import relief must not only indicate a *willingness* to use the period of relief to adjust to new conditions of competition, but also demonstrate by their actions that they are *actually making progress* towards such adjustment. This provision of the bill is designed to monitor such progress. By requiring the ITC to review the efforts made by the domestic industry to adjust, and report on such efforts on an annual basis the successful (or unsuccessful) use of the "breathing space" by the domestic industry will be more readily apparent. This information will moreover be useful to the USTR in determining whether import relief should be modified, terminated, or extended.

Modification or Termination of Relief

Present law

To the extent feasible, any import relief provided for more than three years shall be phased down, with the first reduction of relief taking effect by the end of the third year.

The President may extend import relief beyond the five-year limit at a level no greater than the level in effect at the time of extension. There can be only one extension of relief, to last for up to three additional years.

The President may reduce or terminate import relief if he determines that such reduction or termination is in the national economic interest.

Explanation of provision

The bill retains the provisions under current law (transferring the President's authority to the USTR) and adds a new provision which authorizes the ITC to recommend modifications in either the form or amount of relief (or both) when appropriate—

(a) to compensate for changes in currency exchange rates;

(b) to prevent or respond to attempts to circumvent the import relief measures;

(c) to ensure the effectiveness of the import relief in providing adequate opportunity for adjustment;

(d) to account for changed circumstances in the domestic economy; and

(e) to account for actions taken or not taken by the domestic industry to adjust and become more competitive.

Such a review may be requested by an interested party or by the USTR or may be initiated upon the ITC's own motion. If the USTR requests, the ITC is required to undertake such a review. The ITC is required to report on its review and submit any recommendations for modification of relief promptly, but in any case no later than 90 days after initiating the review.

Within 21 days of receiving a report from the ITC recommending a modification of relief, the USTR must decide whether to implement the ITC recommendation or take other action. If the USTR decides to take other action, he can either deny any modification or order modification different from the ITC recommendation, but in either situation must submit the decision to Congress. Such decision will be subject to the same Congressional override procedures as other import relief decisions.

Reasons for change

It has come to the attention of the Committee that the effectiveness of import relief may be undermined by events subsequent to the time the import relief decision is made, such as currency shifts or other economic developments. Or perhaps foreign competitors attempt to circumvent the import relief—for example by product-shifting or establishing assembly operations in the United States. Such circumstances are often unanticipated or unforeseeable at the time the import relief decision is made.

In these types of situations, there is a need to provide for some modification of the import relief originally provided, to account for such changed circumstances. The Committee intends that such modification may be greater than, less than, or different in form from the relief then in effect, as appropriate.

Chapter 2—Industry Relief from Market Disruption Caused by Imports from Non-Market Economy Countries

Section 135. Market Disruption

Present law

Section 406 of the Trade Act of 1974 authorizes the President to provide temporary import relief in the form of tariffs or quotas if imports from communist countries are causing market disruption. No evidence of unfair trade practices is required, or taken into account. Market disruption exists when imports of an article, like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

Under current law, a petition for relief may be filed with the ITC by workers or firms in the domestic industry. The ITC must determine, within 3 months, whether imports of an article produced in a communist country are causing market disruption. If the ITC finds that market disruption exists, it must also recommend to the President relief in the form of tariffs or quantitative restrictions, to prevent or remedy such market disruption.

Upon receiving the ITC report containing its findings and recommendations, the President has 60 days to take action. As in normal import relief cases under section 202 of the Trade Act, the President must provide import relief unless he determines that such relief is not in the national economic interest of the United States.

Explanation of provision

Section 135 of H.R. 3, as amended, amends section 406 of the Trade Act of 1974 to improve its effectiveness in dealing with market disruption from nonmarket economy imports. In general, section 135 lowers the test for establishing market disruption and requires consideration of such foreign unfair trade practices as subsidies and dumping.

Section 135 amends section 406 by striking out references to "President" and replacing it with "United States Trade Representative." Under these changes, the ITC report on its determinations under section 406 is to be submitted to the USTR, not to the President. The changes transfer from the President to the USTR the authority to take action in response to an affirmative ITC determination. Finally, petitions filed by private parties under section 406 are to be filed with the USTR, not the President.

Section 135 also amends section 406 by striking out all references in that section to "Communist country" and inserting instead the term "non-market economy country." "Non-market economy country" is defined as "any country in which economic activity, as a whole, is generally determined through central government planning rather than being dependent on market forces."

Section 135 adds a new section 406(f) dealing with the ITC determination of market disruption. In general, subsection (f) lowers the standard of causation under section 406, by requiring that imports be an "important" cause of material injury or threat of injury, rather than a "significant" cause. Specifically, the new section 406(f)(1) provides that "for purposes of this section, market disruption exists within a domestic industry whenever an article is being imported into the United States in such increased quantities (either absolutely or relatively) as to be an important cause of material injury or the threat thereof, to the domestic industry providing an article like or directly competitive with the imported article." Section 406(f) also sets forth specific factors which the ITC is required to consider, among other factors, in making its determination. Those factors are:

(A) the volume of imports of the merchandise which is the subject of the investigation;

(B) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(C) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(D) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

A new section 406(f)(3) provides direction to the ITC in evaluating the volume and price effects of imports and the impact of imports on the affected industry. With respect to the volume of imports, the Commission is directed to consider whether the increase in the volume of imports, either in absolute terms or relative to production or consumption in the United States, is significant.

With respect to the effect of imports on price, the ITC is required to consider whether:

(a) there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States, and

(b) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

With respect to the impact of imports on the affected industry, the ITC must evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to:

(a) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity.

(b) factors affecting domestic prices, and

(c) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

A new section 406(f)(4) requires the ITC, where appropriate, to cumulate imports from two or more non-market economy countries which are subject to investigation when making its determination on market disruption.

Under new section 406(g), the ITC may recommend, in lieu of or in addition to other remedies currently authorized, a variable tariff that establishes a benchmark price below which imported merchandise that is causing market disruption cannot be sold. This benchmark would be calculated by taking the average of two sets of average prices. The first would be the average price at which United States producers of merchandise that is like or similar to the article under investigation sell, or offer for sale, the merchandise in arms-length transactions. The second would be the average price at which imported merchandise that is like or similar to the article under investigation is sold, or offered for sale, in the U.S. in arms-length transactions. The price of the imported merchandise under investigation would not be included in these averages.

Since tariff remedies sometimes are rendered ineffective because the price of imported merchandise is adjusted downward and the duty, in effect, is absorbed, the duty applied under this relief mechanism would be variable. The U.S. Trade Representative would direct the Customs Service to vary the tariff rate, or adjust it periodically, so that the price of the imported merchandise in general does not fall below the benchmark price.

Finally, section 135 adds a new section 406(h), which provides that the USTR may deny relief *only if* such relief would have a serious negative impact on the domestic economy.

The amendments made by section 135 would be effective upon date of enactment, except as applied to countries with whom the United States has a bilateral agreement in effect on date of enactment, and U.S. obligations under that agreement conflict with these amendments. In such cases, the amendments would be made effective on the earliest date at which current U.S. obligations are due to expire. The deferral of the effective date of these amendments shall not apply to renewals of agreements negotiated under section 405 of the Trade Act of 1974 which occur after date of enactment of this Act.

Reasons for change

The Committee has long been concerned with trade problems relating to imports from non-market economy countries and the inadequacy of current trade laws to deal effectively with such problems. The provisions of section 135 are designed to correct some of these problems by making the provisions of section 406 more flexible in dealing with competition from non-market economy countries. In particular, section 135 expands the scope of section 406 to allow consideration of disruptive pricing practices and efforts to unfairly manage trade in addition to increased fair competition.

The Committee expects that the changes made by section 135 of the bill will enable section 406 to be an effective remedy against injurious competition from nonmarket economy imports, by lowering the tests for determining market disruption, expanding its applicability to unfair trade practices, expanding the remedy options, and limiting the discretion of the USTR in providing relief.

Chapter 3—Trade Adjustment Assistance

The trade adjustment assistance (TAA) programs for workers and firms under Chapters 2 and 3 of Title II of the Trade Act of 1974 were first established under the Trade Expansion Act of 1962 for the purpose of assisting in the special adjustment problems of workers and firms dislocated as a result of a Federal policy of reducing barriers to foreign trade. The programs were amended extensively in the Trade Act of 1974 and under the Omnibus Budget Reconciliation Act of 1981. The programs were reauthorized by the Consolidated Omnibus Budget Reconciliation Act of 1985 for six years, until September 30, 1991.

Trade adjustment assistance for workers under sections 221 through 250 of the Trade Act of 1974 consists of trade readjustment allowances (TRA), employment services, training and additional TRA allowances while in training, and job search and relocation allowances for workers certified as adversely affected by increased imports and otherwise meeting the qualification requirements. The program is administered by the Department of Labor largely through State employment security agencies under cooperative agreements between each State and the Secretary of Labor.

The amendments to the worker TAA program under H.R. 3, as amended, are intended to make the program more effective as a means to encourage early reemployment of workers and to meet criticisms that income maintenance benefits like TRA lessen the incentive to find reemployment. The amendments would provide trade-impacted workers with greater incentives for early adjustment by presenting eligible workers with three new options of (1) supplemental income maintenance for workers with a prospect of being rehired; (2) supplemental income maintenance linked to training for workers permanently laid off; and (3) an optional supplemental wage allowance to create an incentive for workers to accept reemployment although at lower than previous wage levels.

Other amendments address delays in worker certification and benefit delivery, and create greater certainty in program funding through creation of an entitlement to payment of training costs and establishment of a trust fund. Finally, amendments encourage innovation by the private sector in developing worker training programs and techniques.

Section 141. Trade Readjustment Allowances

Present law

Workers certified as eligible for TAA and meeting individual qualifying requirements under sections 222 and 231 of the Trade Act of 1974 are entitled under section 232 to a weekly cash payment in the form of trade readjustment allowances equal to their most recent unemployment compensation (UC) benefit amount, payable after they have first exhausted any entitlement to regular or extended UC benefits. UC and TRA payments combined are limited to a maximum 52 weeks of unemployment (normally 26 weeks of UC plus 26 weeks of basic TRA). Workers must be enrolled in or have completed an approved job search program, if available, to receive basic TRA. An additional 26 weeks of TRA may be paid to workers to complete approved training (normally weeks 52 to maximum 78).

Explanation of provision

Section 141 of H.R. 3, as amended, amends sections 232 and 233 of the Trade Act to provide the option to a worker who accepts full-time reemployment at a weekly wage that is less than his wage at the time he was laid off to collect TRA in the form of a supplemental wage allowance under section 232(d). To be eligible, the worker must have met the qualifying requirements under section 231(a)(1) and (a)(2) for payment of TRA.

Under the option, the worker could collect, for any week in which he performs services for the scheduled hours of work, up to 50 percent of his TRA entitlement amount as a supplemental wage allowance, limited to an amount which raises his new weekly wage up to an amount equal to 80 percent of his previous wage in adversely affected employment. Upon making an election to collect a supplemental wage allowance, the worker would no longer be eligible for TRA benefits, including if he subsequently leaves his reemployment job.

As provided in section 233(a), as amended, the reemployed worker could collect the supplemental wage allowance during the period covered by the certification for up to a maximum of 52 weeks (i.e., 52 multiplied by the TRA payable), reduced by the total amount of TRA preceding the first week of reemployment to which the worker was entitled or paid. A supplemental wage allowance would be payable for any week of reemployment without regard to whether the worker is also receiving or entitled to UC for that week.

In other words, if a worker accepts reemployment during a period in which he has already collected some weeks of TRA, the amount of that TRA already collected would be deducted from the total amount payable in the form of a supplemental wage allowance. On the other hand, if the worker accepted reemployment prior to exhaustion of his entitlement to UC, he could collect a supplemental wage allowance for a full 52 weeks of reemployment if he has met the qualifying requirements under section 231(a)(1) and (a)(2) for TRA entitlement. A worker would not be eligible to collect a supplemental wage allowance if he becomes reemployed after failing to participate in or complete training or job search requirements for TRA under section 231, as amended by section 142 of this Act.

Reasons for change

Critics of the TAA program have argued that income maintenance benefits like TRA lessen the incentive to find a new job. Further, they maintain that permitting the payment of supplemental income maintenance only when the worker is engaged in training will artificially inflate the demand for training, since it would become the only effective alternative to taking a lower paying job.

Permitting TRA to be converted into a supplemental wage allowance could provide an incentive to return to work for those not wishing to retrain by easing their financial transition. This option would be particularly responsive to the plight of older dislocated workers. Workers with only five to ten years left in the workforce are less adaptable to and interested in retraining. Most older dislocated workers, unlike their younger colleagues who can retrain for skilled, higher-paying jobs, are consigned to unskilled, low-paying jobs. A program that exclusively emphasizes training overlooks and, in effect, discriminates against this group of workers.

The option to convert TRA benefits to a supplemental wage allowance would create for the unemployed worker the incentive to take a new, albeit lower paying, job since he could earn more than if he continued to collect UC or TRA benefits. Spread over a one-year period commencing with termination of unemployment benefits, the allowance would supplement the wage reemployed workers will be paid in what will often be an entry level job. The allowance would cushion the fall in their earning power during the first (usually lowest-paying) year of their new job. However, the 50 percent conversion rate is modest enough (about $2 an hour) that it would be unlikely to distort a worker's decision to undertake retraining if he believed it would have greater long-term benefit.

Section 142. Training for Workers

Present law

Section 231 of the Trade Act of 1974 requires, as a condition for a worker to receive any weeks of TRA benefits, that the worker be enrolled in a job search program approved by the Secretary under section 237 or have completed such a program after his total or partial separation from the adversely affected employment. The requirement does not apply if the Secretary has determined that no acceptable job search program is reasonably available. If the Secretary determines that the worker has failed to begin, or has ceased participation in, an approved job search program without justifiable cause, then no TRA income maintenance may be paid to that worker until he begins or resumes participation in the program.

Under section 236 of the Trade Act, if the Secretary of Labor determines that (1) there is no suitable employment available for an eligible worker; (2) the worker would benefit from appropriate training; (3) there is a reasonable expectation of employment after such training; (4) training is available; and (5) the worker is qualified to undertake and complete such training, then the Secretary shall approve such training for the worker, but only to the extent appropriated funds are available. Upon such approval, the worker is entitled to have the costs of training paid on his behalf by the Secretary.

Explanation of provision

Section 142(a) of H.R. 3, as amended, amends section 231(a) to require, as a condition for a worker to receive any weeks of TRA benefits, that the worker be enrolled in a training program approved by the Secretary under section 236(a) or have completed such a program after he first becomes an adversely affected worker. TRA also may not be paid if the Secretary determines the worker is not enrolled in training as required or has ceased to participate in approved training and there is no justifiable cause, unless and until the worker enrolls or resumes participation in an approved training program.

A worker would be exempt from the training requirement if the Secretary determines that (1) there is no reasonable prospect that the worker will be reemployed by the firm or subdivision from which he was laid off, or (2) it is not feasible or appropriate to approve a training program for that worker. Any worker exempt from the training requirement would continue to be subject to the job search conditions for receiving TRA payments under present law. All workers would have to be enrolled in training to receive any additional weeks of TRA payments, as under present law.

Under section 236(a), as amended by section 142(b), if the Secretary of Labor determines that a worker meets the five statutory criteria for training approval under present law, the Secretary shall approve such training for the worker and the worker shall be entitled to have payment of the costs of such training paid by the Secretary. Training may include approved remedial education. The Secretary shall prescribe regulations that set forth the five criteria under section 236(a)(1) as the basis for making determinations.

The payment for any worker cannot exceed $4,000 with respect to a single certification, with the actual payment amount to be determined between the State administering agency and the provider of training. The Secretary shall pay the costs of training under a new voucher system. If the costs of training provided to a worker are less than $4,000, then any relocation allowances granted to the worker under section 238 may be paid, in whole or in part, under the voucher system, up to a total aggregate payment under the voucher system not to exceed the $4,000 limit. Section 142 also amends section 236 to require that the costs of on-the-job training be paid in 12 equal monthly installments.

Reasons for change

The narrowing of eligibility for the basic weeks of TRA, by requiring workers without a prospect of being recalled to their previous employment because of plant closure to enter training as a requirement for TRA eligibility, is designed to address the longstanding criticisms of the income maintenance aspects of the TAA program and to encourage workers to seek new skills as early as possible after their permanent layoff. At the same time, it is recognized that supplemental income maintenance is essential support for workers to be able to seek reemployment through training or job search programs.

The creation of new entitlement authority for training removes the uncertainties about adequate funding that have limited the availability of training under the program in the past. The Secretary and the State agencies will no longer be limited by the extent appropriated funds are available in otherwise approving training under the five criteria of present law, for which determinative criteria will be set forth in regulations promulgated by the Secretary.

Section 143. Cooperating State Agency Functions

Present law

State agencies administer TAA benefits through cooperative agreements entered into with the Secretary of Labor under section 239 of the Trade Act. Among their other functions, each agency must advise workers to apply for training at the time they apply for TRA payments and, within 60 days after a training application is made, interview the worker regarding suitable available training opportunities.

Explanation of provision

Section 143 of H.R. 3, as amended, amends section 239(f) to require each agency to advise each worker to apply for training or job search programs, as appropriate, when they apply for TRA and to interview workers as soon as practicable about suitable training opportunities. State agencies would also be required (1) to advise each worker who applies for unemployment insurance of TAA benefits and the procedures and deadlines for applying, and (2) to facilitate the early filing of petitions for workers who the agency considers likely to be eligible for benefits.

Reasons for change

The purpose of these amendments is to ensure that workers who may be eligible for TAA are aware of the program and its requirements and are assisted in applying for the benefits as soon as possible after their layoff in order to facilitate their early adjustment.

Section 144. Supplemental Worker Training Programs

Present law

No provision.

Explanation of provision

Section 144 of H.R. 3, as amended, adds a Chapter 5 to Title II of the Trade Act of 1974 to authorize the Secretary of Commerce to provide grants and loans to support training programs administered by educational institutions and by firms. The programs must provide training that would meet the standards for approval for eligible workers under the TAA program, unless the Secretary considers the program contains innovative training methods that merit testing. Total grants outstanding cannot exceed $1 million; total loans outstanding to one training program cannot exceed $1 million. Not more than 30 percent of total available funds may be expended on programs to test innovative training methods.

The financial assistance would be funded, as provided for in advance in appropriation Acts, from a Supplemental Training Fund established in the U.S. Treasury. The Fund would consist of appropriations, payments of principal and interest from program loans, and appropriations which are repayments and other receipts remaining from the firm TAA program.

Reasons for change

Educational institutions and firms play a major role in developing suitable worker retraining programs, including the development and testing of innovative training methods. Providing financial assistance to support the efforts of educational institutions and firms will improve the TAA program overall by creating new programs and methods that might not otherwise be available to train eligible workers.

Section 145. Automatic Certification of Eligibility To Apply for Adjustment Assistance

Present law

Under sections 222 and 251 of the Trade Act of 1974 the Secretary of Labor or Secretary of Commerce certify a petitioning group of workers or a petitioning firm as eligible to apply for worker or firm TAA if the Secretary determines that increased imports contributed importantly to worker layoffs and a decline in sales and/or production of the firm. The Secretary is required by section 223 to make the determination and issue any certification within 60 days after the petition is filed.

As a result of a finding of serious injury by the ITC to a domestic industry under the import relief provisions of the Trade Act, the Secretary of Commerce may be directed by the President to expedite consideration of TAA petitions.

Explanation of provision

Section 145 of H.R. 3, as amended, amends sections 222 and 251(c) to provide for the automatic certification by the Secretary of Commerce or Secretary of Labor of a group of workers or a firm as eligible to apply for TAA if they are within a domestic industry that the ITC has notified the Secretary has been found under the import relief provisions of the Trade Act to be seriously injured, or threatened with serious injury, caused substantially by increased imports. The automatic certification would apply only to petitions filed by groups of workers or firms within three years after the notification was received. The certification would be issued under section 223 within 60 days specifically identifying the group of workers covered.

Reasons for change

Automatic certification should greatly expedite benefit delivery under the TAA program to workers and firms in industries that are seriously injured by increased imports. Large backlogs of petitions and limited staff resources have often resulted in lengthy delays beyond the 60-day certification period. The amendment will eliminate the need for separate investigations of each petition filed by workers and firms within the defined injured domestic industry. The Committee expects, therefore, that petitions will be processed expeditiously and certifications issued in less than 60 days.

Section 146. Adjustment Assistance Trust Fund

Present law

No provision. Any tariff revenues go into the general fund of the Treasury. The TAA programs are funded from general revenues.

Explanation of provision

Section 146 of H.R. 3, as amended, amends section 245 of the Trade Act to establish an Adjustment Assistance Trust Fund, consisting of revenues collected from import relief or section 301 actions or from the auctioning of import licenses as authorized under section 1102 of the Trade Agreements Act of 1979, duties imposed to fund worker TAA (section 147), or supplemental appropriations. Revenues deposited in the trust fund may only be used for the costs of worker and firm TAA and for any Federal program with respect to communities in which a substantial number of workers or firms are certified eligible to apply for TAA.

Reasons for change

The establishment of a trust fund is intended to channel revenues directly attributable to import protection or to other import measures directly to programs designed to assist adjustment by workers and firms injured by import competition. Amounts in the trust fund would be available for TRA payments and payments for approved training under section 236, as amended by this Act, and their administrative costs without being subject to appropriation Acts since those payments are entitlements. Amounts in the fund for other portions of the TAA programs and their administrative costs would be available to the extent provided for in advance by appropriation Acts.

Section 147. Imposition of Small Uniform Duty on All Imports

Present law

No provision. The TAA programs are currently funded from general revenues.

Explanation of provision

Section 147 of H.R. 3, as amended, adds a section 245A to the Trade Act to require the President to undertake negotiations in the GATT to allow any country to impose a small uniform duty on all imports to be used to fund any program which assists worker adjustment to import competition. The President shall submit a certification to the Congress whenever the GATT allows such a duty. A uniform ad valorem duty would be imposed, in addition to any existing duties, sufficient only to provide the funds necessary to carry out the worker TAA program with respect to each fiscal year following the year in which the statement was submitted. The duty would not be product or sector-specific. Rather, it would apply to all imports except for certain special duty-free entries (e.g., imports for government use) under schedule 8 of the Tariff Schedules of the United States and articles of minimal value (less than $1,000).

Reasons for change

The fee would create a direct source of revenues linked to imports to fund worker TAA programs.

Section 148. Effective Dates and Conforming Amendments

Section 148 of H.R. 3, as amended, sets forth effective dates and conforming amendments to the table of contents to the Trade Act of 1974 for the amendments under Chapter 3 with respect to trade adjustment assistance. All provisions of Chapter 3 shall be effective on the date of enactment of this Act, except the amendments made by section 141 (trade readjustment allowance and section 142 (training for workers) shall apply with respect to workers covered by petitions filed under section 221 of the Trade Act on or after the date of enactment of this Act.

Subtitle D—Amendments to the Countervailing and Antidumping Duty Laws

Section 151. Reference

Section 151 states that, unless otherwise provided, whenever in this subtitle an amendment or repeal of, a title, subtitle, section, subsection, or other provision, the reference shall be considered to be made to a title, subtitle, section, subsection, or other provision of the Tariff Act of 1930.

Section 152. Processed Agricultural Products

Present law

Under section 771(4) of the Tariff Act of 1930, the term "industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. Under section 771(10), the term "like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.

Under section 771(9), an "interested party" who has standing to file an antidumping or countervailing duty petition on behalf of an industry includes:

(a) a manufacturer, producer, or wholesaler in the United States of a like product;

(b) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product;

(c) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States; and

(d) an association, a majority of whose members is composed of interested parties described above.

Explanation of provision

Section 152 of H.R. 3, as amended, makes certain amendments to the definition of "industry" to allow growers or producers of a raw agricultural product in appropriate cases to be considered part of the domestic industry, and to have standing along with processors to bring antidumping and countervailing duty cases involving imports of processed agricultural products.

Section 2(a) adds a new section 771(4) (E) to the definition of "industry" to provide that in countervailing duty and antidumping investigations involving agricultural products processed from raw agricultural products, the growers or producers of the raw agricultural product may be considered part of the industry producing the processed product if two tests are met: (1) the processed agricultural product must be produced from the raw agricultural product through a single continuous line of production, and (2) there is a substantial coincidence of economic interest between producers of the raw and of the processed agricultural products.

Processed agricultural products are considered to be processed from raw agricultural products through a single continuous line of production if: (1) the raw agricultural product is substantially or completely devoted to the production of the processed product, and (2) the processed agricultural product is produced substantially or completely from the raw product. The Committee does not expect this test to be met if the raw product is devoted to production of several different processed products, or if the processed product is produced from several different raw products. The Committee intends "substantially or completely" to mean all or almost all.

The determination as to whether there is substantial coincidence of economic interest between producers of the raw and processed agricultural products is to be based upon relevant economic factors demonstrating economic relationships between the two groups of producers.

Section 152 also amends the definition of "interested party" under section 771(9) of the Tariff Act of 1930 to provide that growers or producers of a raw agricultural product who were determined to be part of the industry pursuant to the new section 771(4)(E), in combination with processors, would have standing to bring countervailing duty and antidumping investigations involving the processed product. A coalition or trade association which is representative of either (a) processors or (b) processors and growers or producers would be considered an interested party and thus have standing to file petitions for investigations relating to processed agricultural products.

Finally this section 771(7) of the Tariff Act of 1930 by adding an additional factor to be considered by the Commission in determining the existence of threat of material injury. In any countervailing or antidumping investigation involving imports of both a raw and processed agricultural product, the Commission would be required to consider the likelihood of product-shifting due to an affirmative determination with respect to the raw or the processed product (but not both). It should be noted that this amendment is not necessarily restricted to raw and processed agricultural products whose producers are determined to be part of the same industry pursuant to the new section 771(4)(E).

Reasons for change

The amendments contained in section 152 of the bill directly relate to the inquiry made by the International Trade Commission under Title VII of whether agricultural industries are being materially injured by dumped or subsidized imports. Many of the concepts embodied in these amendments have been applied by the ITC in past cases involving agricultural products. The purpose of including them in the statute is to give explicit congressional endorsement of their consideration, and to encourage their application.

In defining the scope of the domestic industry, the ITC may consider whether the growers or producers of a raw agricultural product as well as the processors of the finished product operate as a single industry producing the processed "like" product. In past cases, the Commission has examined the degree of vertical integration in the industry, as manifested by common ownership between packers and processors, and the existence of contractual relationships between prices of the raw and processed agricultural commodities. It is the Committee's intent that the Commission continue to view these factors as possible evidence of coincidence of *economic* interests. The inquiry should focus, however, on relevant economic relationships, and not necessarily legal relationships.

The Commission may examine a variety of economic factors in making its determination as to the scope of the industry. The Commission shall base its determination on the facts and circumstances of each case, and apply this section in a manner that is consistent with commercial realties in relevant industries.

In those cases where the ITC determines that price is a factor to be considered, the Commission is directed to examine the degree of correlation between prices of the raw and of the processed agricultural commodities. Such price relationship could be based upon market factors as well as contractual relationships. In addition, there are commodities for which the processor adds very little value to the raw product in the processing operation. In such cases, the ITC would consider whether the value of the raw agricultural product constituted a significant percentage of the value of the processed agricultural product as evidence of coincidence of economic interest.

The breadth of the definition of domestic industry obviously has significant implications for determining whether there is material injury, or a threat of material injury, to the domestic industry. In cases in which the domestic industry includes both growers or producers and processors under the new section 771(4)(E), injury to the growers or producers of the raw agricultural product as a result of imports of the processed agricultural product is relevant in determining injury to the domestic industry. Also relevant in such cases is the relative importance, on the basis of value-added, of the growers or producers and of the processors within the industry producing such product. In making its injury determination, the ITC may give greater weight to one or the other group within the industry, in proportion to their relative importance, if either group accounts for a significant portion of the total value of the processed product.

Section 153. Definition of Subsidy

Present law

Section 771(5)(B) sets forth a nonexclusive list of actionable domestic subsidies which, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, fall within the definition of subsidy subject to U.S. countervailing duties. This list includes:

(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

(ii) The provision of goods or services at preferential rates.

(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(iv) The assumption of any costs or expenses of manufacture, production, or distribution.

Explanation of provision

Section 153 of H.R. 3, as amended, revises the structure of section 771(5) relating to the definition of subsidy. The current provisions would become subparagraph (A). A new "Special Rule" is added in subparagraph (B) to clarify the phrase "provided . . . to a specific enterprise or industry, or group of enterprises or industries." Finally, a new subparagraph (C) is added to provide a legislative hierarchy in determining the preferentiality of rates for goods and services under subparagraph A(ii)(II).

With regard to the so-called specificity test, subparagraph (B) would require the administering authority to determine whether benefits *actually conferred* accrued to a specific enterprise or a group of enterprises or industries rather than merely examining the legal nature of the subsidy program and the "nominal" availability of such benefits. This, in effect, codifies the finding of the Court of International Trade decided in *Cabot Corp.* v. *United States,* 620 F. Supp. 722 (C.I.T. October 4, 1985) that the Commerce Department had been interpreting the concept of "specificity" and "general availability" in an unduly narrow manner. The Committee embraces the court's analysis of this issue on page 732 of its opinion, wherein it states—

> The appropriate standard focuses on the *de facto* case by case effect of benefits provided to recipients rather than on the nominal availability of benefits. . . . The definition of "bounty or grant" under section 1303 as intended by Congress remains as it is embodied in the case law and later affirmed by Congress in section 1677(5). This definition requires focusing only on whether a benefit or "competitive advantage" has been actually conferred on a "specific enterprise or industry, or group of enterprises or industries."

Prior to this decision, the Commerce Department had uniformly held that "generally available" benefits, that is, benefits available to all companies and industries within an economy are not countervailable subsidies. Part of Commerce's rationale in adopting this rule, was that absent such an interpretation, government-provided services, such as national defense, education, police and fire protection, and infrastructure programs such as inland waterways could be countervailable.

The purpose of this provision, however, is not to subject to countervailable duties the provision of such government services which are clearly in the public welfare and benefit the society as a whole. As stated by the court in *Cabot* (at page 731):

> The distinction that has evaded the ITA is that not all so-called generally available benefits are alike—some are benefits accruing generally to all citizens, while others are benefits that when actually conferred accrue to specific individuals or classes. Thus, while it is true that a generalized benefit provided by government, such as national defense, education or infrastructure, is not a countervailable bounty or grant, a generally available benefit—one that may be obtained by any and all enterprises or industries—may nevertheless accrue to specific recipients. General benefits are not conferred upon any specific individuals or classes, while generally *available* benefits, when actually bestowed, may constitute specific grants conferred upon specific identifiable entities, which would be subject to countervailing duties.

The Court in *Cabot* provided a sound interpretive rule to be applied in those cases where broadly available benefits are at issue. The test for such programs is whether there is a sufficient degree of competitive advantage in international commerce being bestowed upon a discrete class of beneficiaries that would not exist but for government action. This necessarily involves subjective, case-by-case decisions to determine whether there is such a discrete class of beneficiaries. This advantage distinguishes general benefits (such as national defense or public education) from benefits that are properly countervailed.

There are, for example, instances where a government provides an input product, such as a natural resource, to its industries in a manner that as actually conferred benefits a specific enterprise, industry, or group thereof. For example, if a government restricts access to a product such as natural gas and offers it for consumption at prices below free market rates, an artificial competitive advantage is provided to the consuming industries and such practice could be countervailable. On the other hand, if the resource is freely available on a nondiscriminatory basis to all purchasers within a country without government restriction, such as Venezuelan natural gas, then a countervailable subsidy is not likely to exist.

New subparagraph (C) deals with the issue of preferentiality of rates with respect to the provision of goods or services under new subparagraph (A)(ii)(II) of section 771(5). Here, too, the Commerce Department has traditionally taken a very mechanical approach to this subject and found no countervailable subsidy unless goods or services are provided at rates or on terms more favorable to some within the relevant jurisdiction than to others within that jurisdiction. Further, when Commerce has found a domestic subsidy to exist because of preferentiality, the measure of the amount of the subsidy has often been limited to the difference in rates between two recipients of government-provided benefits, without taking into account any commercial considerations with regard to whether the benchmark price or rate suffers from the same infirmity as the price or rate being investigated due to government subsidization.

This provision would introduce the element of commercial considerations into the determination of preferentiality by creating a hierarchical progression of market-determined rates as benchmarks for Commerce to look to in determining the existence of, and measurement of, subsidies on goods or services.

The first benchmark which Commerce should consider is freely available, market-determined domestic rates for such or similar items. This benchmark, like the first benchmark under Commerce's "Preferentiality Index" (51 Fed. Reg. 13,272) looks to prices or rates within the jurisdiction for comparison. However, unlike the current index, which would compare the price of the good or service which is under investigation with the price that the government charged another purchaser for such or similar goods or service, the administering authority would be required to look to freely available, market-determined prices, if any exist, as the first benchmark. The Committee believes that in order to get a true measure of the "competitive advantage" obtained by the recipient of a government bounty or grant, one cannot look simply to the price at which the government is providing the good or service to other purchasers in the economy since frequently that price may also be tainted by a subsidy similar to the one under investigation. Instead, the administering authority should be looking for market-determined prices, which in most cases would require a comparison with prices of such or similar goods or services provided by private profit-motivated entities.

The Committee recognizes, however, as did the Commerce Department in its preferentiality index, that such prices may be distorted by the government's presence in the market. As the Department held in the preliminary affirmative countervailing duty determination *Certain Softwood Lumber Products from Canada,* 51 Fed. Reg. 37,453 (Dep't. Comm. 1986), "where the government limits supply and demand conditions, the competitively bid price may be rendered meaningless . . . . Further, . . . the government's presence in the market may have distorted private . . . prices." (*Id.* at 37,457). Under such circumstances, Commerce should not use such price as a benchmark.

If the administering authority determines that an appropriate internal commercial benchmark is not available, it shall look to appropriate external rates for such or similar goods. Among the external benchmarks which the administering authority should consider are freely available, market-determined export prices for such or similar goods by the government; the world market rate, if any, for such or similar goods; or the freely available, marketdetermined rate for such or similar goods or services in another country if Commerce finds that such external market resembles the market in question.

The Committee recognizes, however, that a country may have a comparative advantage over other countries in producing a particular product, and to the extent that market conditions permit, therefore could establish a price available to both export and domestic customers below those of other suppliers in the world market without being engaged in a subsidy practice. To the extent that such an advantage could be demonstrated and quantified, the administering authority would have discretion to adjust the selected external benchmarks accordingly, in order to arrive at an appropriate market-determined measurement of a subsidy practice.

On the other hand, there are also circumstances when the export price does not reflect market conditions and would be an unreliable measure of subsidy. For example, special non-market factors such as government manipulation of export sales in limited quantities to artificially establish a low benchmark for purposes of this legislation or a government policy to discourage exports by maintaining an artificially high export price could significantly distort the export price and reduce its usefulness as a benchmark. This provision would give the administering authority the flexibility to take such factors into account in determining the existence of, and measuring subsidies.

Finally, if none of the preceding benchmarks are available or appropriate under the circumstances of a particular case, the administering authority would be expected to calculate a benchmark, on the basis of the best information available, by determining the cost of producing the good or service and including a reasonable profit which would be consistent with commercial considerations for such a product or service. This standard is similar to the cost of production standard in Commerce's preferentiality index, except, in order to be consistent with the other standards discussed above, Commerce would have to adjust the calculated cost of production of a given product or service by adding a reasonable amount for profit so that the calculated price would approximate what a freely offered, market-determined price for such good or service would have been in that country had there been a profit-motivated seller of the good or service.

Reasons for change

This provision is intended to clarify the application of our countervailing duty law to domestic subsidies. The provision was added by the Committee as a substitute for sections 153 (definition of domestic subsidy) and 155 (resource input subsidies) of H.R. 3, as introduced. The Committee is encouraged by the Commerce Department's recent preliminary affirmative determination in *Certain Softwood Lumber Products from Canada* as a reflection that the Department is beginning to take a broader perspective on its interpretation of the specificity test in dealing with resource-type products in light of the court's holding in *Cabot.* It now appears that a special provision dealing with resource input products is not necessary for such an input product to be countervailable if the Department properly applies the specificity test. This provision embraces the court's analysis on this issue.

The Committee has also been concerned about the narrow focus that the Commerce Department has taken in the application of the preferentiality standard in clause (ii) of section 771(5)(B). This provision would introduce the concept of commerciality into the consideration of preferentiality. Section 153 of H.R. 3 as introduced would have done this directly by combining clauses (i) and (ii) and, in effect, providing alternative standards of commerciality and preferentiality for the provision of capital, loans, loan guarantees, goods, or services. In order to avoid confusion by using the phrase "on terms inconsistent with commercial considerations" in two different contexts, the Committee chose not to add this phrase to clause (ii) in section 771(5)(B). Instead, the provision sets forth a hierarchy for the determination of preferentiality which has the concept of commerciality woven through it by use of the term "freely available, marketdetermined" with respect to appropriate benchmarks to be used in determining the existence of, and measuring the amount of, a domestic subsidy.

The Committee believes that these changes will ensure that the original intent of the Congress of covering under the countervailing duty laws all bounties or grants by governments which aid specific industries or a group of industries by providing a competitive advantage in international commerce will be carried out.

Section 154. Definition of Material Injury and Threat of Material Injury

Factors for ITC To Consider

Present law

In determining whether a domestic industry is materially injured or threatened with material injury by reason of imports subject to investigation, the ITC is required under section 771(7)(B) of the Tariff Act of 1930 to consider, among other factors—

(i) the volume of imports,

(ii) the effect of imports on prices in the United States for like products, and

(iii) the impact of imports on domestic producers of like products.

Paragraph (C) of section 771(7) further identifies particular factors the ITC must consider in evaluating these three factors.

Explanation of provision

Section 154 of H.R. 3, as amended, makes certain changes to section 771(7) to clarify Congressional intent with respect to the ITC injury analysis. First, the amendment clarifies current law and Congressional intent that, in every case, the Commission is required to consider all three factors of volume, price, and impact.

Second, the provision amends section 771(C)(ii) to replace the term "price undercutting" with the term "price underselling" to clarify that no evidence of predatory pricing practices is required.

Third, section 771(C)(iii) is amended to clarify the industry's health should be determined in relation to that particular industry—not in relation to other industries, or to manufacturers as a whole, which may be responding to different business cycles.

Finally, section 154 clarifies that, in assessing the impact of imports on domestic producers, the ITC only consider the domestic production facilities and operations of domestic producers. If a domestic producer also imports, the ITC should only consider those facilities and operations of that producer which are related to production of the like product. If a domestic producer also has offshore production facilities, those operations should not be considered part of the domestic industry for injury purposes.

Reasons for change

The changes which the Committee has approved to section 771(7)(B)-(C) are not dramatic—indeed most of them are clarifications of current law and of original Congressional intent with respect to current law. These changes have been approved, however, in light of concerns that certain Commissioners may not be applying the law in accordance with Congressional intent. Often it is difficult to ascertain, from reading a particular Commissioner's opinion, whether the Commissioner in fact considered all factors required under the law, and based his or her decision on such factors.

The Committee, for example, is concerned that certain Commissioners may base a negative determination on simply one factor without even examining the others. A sound determination of material injury cannot be made unless there is a thorough analysis of the volume of imports, the price effects of those imports, and the impact which imports at that volume and at such prices are having on domestic producers.

The second change focuses in particular on the evaluation of the price effects of imports. The Committee is concerned that certain Commissioners have narrowly interpreted the term "price undercutting" to refer only to *predatory pricing behavior* whereby a firm lowers its price to drive out competitors in order to gain market power. Some Commissioners have also stated that they do not find evidence of underselling as gathered by the Commission staff to be probative on the issue of causation of injury. The change of wording in the statute is intended to clarify that the dumping and countervailing duty laws are not intended to reach only instances of predatory pricing. A foreign producer may have no reasonable hope of obtaining market power, yet may cause material injury to a United States industry through below-market prices. The Committee also believes that not all price differences can be explained by differences in the merchandise. A foreign producer may sell merchandise that is commercially identical to U.S.-produced merchandise at prices that are significantly lower than the U.S.-produced merchandise.

The third change relates to the Committee's concern that, in examining the impact of imports on domestic producers, the ITC should not examine the health or condition of an industry in any abstract sense. An industry's health should be determined in the context of the impact that imports are having on that industry. Furthermore, the condition of an industry should be considered in the context of the dynamics of that particular industry sector, not in relation to other industries or manufacturers as a whole. The Commission should consider the factors under section 771(7)(C)(iii) with regard to the normal business cycle for that industry and the normal conditions of competition for that product market.

Finally, this section clarifies that foreign operations or import operations of domestic producers are not to be considered in measuring the impact of imports on the domestic industry. For example, profits earned by a domestic producer due to products which it imports to meet competition should not be the basis of a negative determination of injury. The domestic industry may be materially injured by reason of unfair imports even if some producers themselves import in order to stay in business.

Cumulation

Present law

In determining whether there is material injury by reason of dumped or subsidized imports, under section 771(7)(iv) the ITC must cumulatively assess the volume and price effects of imports from two or more countries subject to investigation, if such imports compete with each other and with like products of the domestic industry in the U.S. market.

Explanation of provision

Section 154 makes certain amendments to section 771(7) of the Tariff Act to clarify when cumulation is appropriate, to mandate cumulation of allegedly subsidized and allegedly dumped imports, and to require cumulation to the extent practicable in cases involving threat of material injury, and to provide for a limited exception to the cumulation requirement with respect to negligible imports.

In determining whether there is material injury, the bill requires the ITC to cumulatively assess the volume and price effects of imports of a product from two or more countries if such imports either (a) are currently subject to any antidumping or countervailing duty investigation, or (b) within the 12-month period preceding the initiation of the current investigation, were subject to any antidumping or countervailing duty investigation which resulted in a final order, suspension agreement, or termination based on a quantitative restraint agreement. The requirement under current law that such imports, to be cumulated, must compete with each other and with the like product of the domestic industry is retained.

In determining threat of material injury, the bill requires the ITC, to the extent practicable, to cumulatively assess the volume and price effects of imports from two or more countries if such imports are currently subject to any antidumping or countervailing duty investigation, and such imports compete with each other and with the like product of the domestic industry.

Section 154 further provides, however, for a limited exception to the cumulation requirement for negligible imports. The provision authorizes the ITC not to cumulate with respect to a particular investigation if it determines that the imports subject to investigation are negligible in volume and effect. The ITC is required to consider whether the volume and market share of the imports subject to investigation are negligible; whether sales transactions involving the imports are isolated and sporadic; and whether the domestic market for the product is price-sensitive by reason of the nature of the product, so that a small quantity of imports could result in price suppression or depression.

If, for example, the ITC finds price-sensitivity, then it generally should cumulate imports with respect to that product, if even small quantities of imports could affect the market and injure domestic producers. If the ITC finds, however, that the product market is not particularly price-sensitive and also finds that the volume and market share of the imports are negligible, or that sales transactions involving the imports are extremely isolated and sporadic such that those imports are having no discernible adverse impact on the domestic industry, then the ITC may refrain from cumulation.

While this amendment gives some limited discretion to the ITC to refrain from cumulative injury assessment with respect to imports from a particular source, the Commission shall apply this exception narrowly and only in circumstances where it is clear that imports from that source are so small and so isolated that they could not possibly be having any injurious impact on the U.S. industry. The ITC shall apply this exception with particular care in situations involving fungible products, where a small quantity of low-priced imports can have a very real effect on the market.

Reasons for change

Section 154 amends the cumulation requirement in response to numerous questions and difficulties which have arisen in the application of that provision since it was added to the law in 1984 by the Trade and Tariff Act of 1984.

The Committee, both in approving the original cumulation provision and in approving these amendments, recognizes that competition from unfairly traded imports from several countries simultaneously often has a hammering effect on the domestic industry. This hammering effect may not be adequately addressed if the impact of the imports are analyzed separately on the basis of their country of origin. The cumulation requirement is thus an effort to make the application of the injury analysis more realistic in terms of recognizing the actual effects of unfair import competition.

Certain questions have arisen since 1984 with respect to how far back in time the ITC should go in its cumulative assessment. The bill's provision clarifies that all imports currently subject to an antidumping or countervailing duty investigation should be included, and that imports subject to recent findings of unfair trade practices should also be included. Recent findings include final orders and suspension agreements entered into during the 12 months preceding initiation of the instant investigation. Furthermore, in light of the increasing frequency of withdrawals of petitions and terminations of investigations based on a quantitative restriction agreement, the cumulation requirement would also extend to such cases, provided there was at least an affirmative preliminary determination of dumping or subsidies made by the Commerce Department, and the quantitative restriction came into effect during the 12-month period preceding initiation of the instant investigation.

These amendments reflect the Committee's concern that unfairly traded imports continue to have an injurious effect on a domestic industry for a limited period following imposition of a remedy under the unfair trade laws. This may occur, for example, because such imports may have entered U.S. customs territory but not yet entered into competition in the marketplace. The application of the cumulation provision to imports entering as far back as 12 months preceding date of initiation of the instant investigation reflects the

Committee's desire to set a reasonable time frame for the cumulation analysis.

The Committee intends, by requiring cumulation to the extent practicable in determining threat of material injury that the ITC apply the same principles regarding normal or cross-cumulation in threat determinations as it would apply in material injury determinations. Cumulation in threat cases, however, would not include imports which are subject to preexisting orders, since it would no longer be possible for such imports to constitute a threat. Moreover, the Committee recognizes the difficulty of applying the concept of cumulation to threat cases, and does not seek to require cumulation where it is impracticable to do so because such assessment would be conjectural or speculative.

The rationale for explicitly mandating cross-cumulation is that the hammering effect of being injured by unfairly traded imports is as real and as injurious whether the unfairly traded imports are being dumped or subsidized. The cumulation requirement is limited to imports which are having a simultaneous impact on the domestic industry by competing during the same time period, but should not be limited to one type of unfair trade practice and not the other.

Finally, the cumulation provision of section 154 includes a new exception to the cumulation requirement for negligible imports. Certain cases have been brought to the attention of the Committee where strict application of the cumulation mandate has led to results which are anomalous to an objective analysis of market dynamics.

The Committee does not intend for the cumulation provision to lead to ridiculous results. Therefore, the Committee has adopted a limited exception to the cumulation requirement for cases in which the ITC determines that the imports subject to the instant investigation are truly negligible and have no discernible adverse impact at all on the domestic industry. The Committee expects the ITC to apply the exception narrowly and only when the facts clearly justify its application. The Committee does not intend for this narrow, limited exception to subvert the purpose and general application of the cumulation requirement.

The Committee does not provide in the legislation a specific numerical standard for what constitutes "negligible" in recognition that what may be "negligible" imports in volume or market share for one industry may be different than for another industry. For an industry which is already suffering considerable injury and has long been battered by unfair import competition, very small additional quantities of unfair imports may be more than negligible. For another industry, not so deeply injured, small additional quantities of unfair imports may have no discernible effect at all. The Committee intends that "negligible" be interpreted in light of industry conditions, and in a manner that makes sense given the realities of the marketplace.

Geographically Isolated Markets

Present law

No provision.

Explanation of provision

Section 154 of H.R. 3, as amended, adds a new provision to section 771(7)(E) regarding geographically isolated markets. The provision authorizes the ITC to consider whether certain imports subject to investigation have historically supplied a substantial proportion of demand in a geographically isolated market, and, in appropriate circumstances, may disregard imports into such geographically isolated market in making its injury determination.

A geographically isolated market is one in which—

(i) producers located within such market have not supplied demand in that market to any substantial degree in the most recent representative period, and there is no reasonable likelihood that they will do so in the future;

(ii) producers have made no significant effort as measured by capital investment in plant and equipment, or in distribution and marketing, within a reasonably recent period, to meet demand in that market, and there is no reasonable likelihood that they will do so in the future; and

(iii) producers located outside the area have historically not met demand within the region at prices reasonably equivalent to prices prevailing elsewhere in the United States because of transportation, insurance, or other costs which would be incurred to ship the product to, or market the product in, the geographically isolated market.

Reasons for change

In approving this provision, the Committee recognizes that certain quantities of imports may supply a particular geographic market because there is essentially no domestic source of supply for that market. This may occur, for example, because of prohibitive costs of transporting the product into such geographic market from domestic production facilities. If domestic producers have made no significant effort to compete in that market, and there is no reasonable likelihood that they will in the near future, then such imports into that geographically isolated market cannot reasonably be considered to be causing injury to the domestic industry.

This provision allows the ITC, under such circumstances, to disregard those quantities of imports into geographically isolated markets, and base its injury analysis on the volume, prices, and impact of imports which supply the rest of the country, in which domestic producers compete with imports.

Threat of Material Injury

Present law

In determining whether there is a threat of material injury to a domestic industry, the ITC must consider, among other relevant economic factors, the following:

(1) if a subsidy is involved, the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement);

(2) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States;

(3) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level;

(4) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise;

(5) any substantial increase in inventories of the merchandise in the United States;

(6) the presence of underutilized capacity for producing the merchandise in the exporting country;

(7) any other demonstrable adverse trends that indicate the probability that the importation of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury; and

(8) the potential for product-shifting.

Explanation of provision

Section 154 adds a new factor for the ITC to consider in determining threat of material injury: diversion of foreign products to the U.S. market by reason of restraints on exports of the merchandise to, or on imports of the merchandise into, third country markets.

In investigations involving dumping, the Commission would also be required to consider whether dumping of the same merchandise by the same party in other GATT member markets suggests a threat of material injury to the U.S. industry. The Commission must request information concerning this issue from the foreign manufacturer, exporter, or U.S. importer. If they fail to present specific and convincing evidence that the previous finding(s) of dumping in other markets does not suggest a threat of injury to the U.S. industry, the Commission may draw adverse inferences.

Reasons for change

These changes made by section 154 reflect the Committee's growing concern with two practices which are a potential threat of material injury to U.S. industries: diversion, and worldwide dumping. The Committee received considerable testimony during its hearings on the injurious effects of these practices. Current law, however, does not explicitly require consideration of these factors by the ITC in determining whether a threat of material injury exists. The Committee strongly believes that each of these factors should be considered by the Commission.

In particular, the Committee gave considerable attention to the serious adverse effects of extensive or repeated dumping of the same product in various export markets. It is the view of the Committee that findings of dumping and impositions of antidumping remedies in other countries on imports of the same product from the same country, may be indicative of a pattern of injurious export practices by foreign producers.

Section 155. Anti-Circumvention of Antidumping and Countervailing Duty Orders

Present law

No provision.

Explanation of provision

Section 155 of H.R. 3, as amended, adds a new paragraph to section 771 of the Tariff Act of 1930 to clarify the reach of an antidumping finding or order and a countervailing duty order (orders). The amendment is designed to eliminate the prevalent forms of evasion and circumvention practiced by certain foreign producers today.

The bill adds a new section 771(18)(B) to address two types of circumvention: (1) the importation of parts or components to be assembled in the United States into the class or kind of merchandise covered by the order, such as when picture tubes and printed circuit boards are shipped by the manufacturer to a related subsidiary in the United States to be assembled and then sold as a television receiver; (2) the importation of an incomplete or unfinished article to be completed in the United States, by means other than assembly, into the class or kind of merchandise covered by the order, such as when steel pipe is imported by a related party that threads it and sells it as threaded pipe.

In both situations, the bill clarifies that the completed or assembled product is subject to the order covering that class or kind of merchandise if the conditions set forth in the subsection are met. Further, in an antidumping or countervailing duty investigation, the Commerce Department would identify which merchandise, if any, has been entered into the United States for further assembly or completion, and where required, would include such parts, components, or articles in the investigation.

The bill adds a new section 771(18)(C) to allow the Commerce Department to prevent evasion of an order by shipment of merchandise to the United States from the country of origin through a third country, if the conditions set forth in the subsection are met. When including merchandise assembled or finished in a third country under an order, the Commerce Department must determine that: (i) the third country producer is related to a manufacturer covered by the order; (ii) substantially all the parts or components (measured by volume or value or both, as appropriate) are obtained from that manufacturer; and (iii) the value added in the third country is relatively small. An additional factor in this determination by Commerce is whether the third country operation was established only after the order was issued.

In short, Commerce will consider all factors relevant to a determination that the producer in the country covered by the order has evaded the order by continuing to sell dumped or subsidized merchandise to the United States by indirect shipment. This subsection might be applicable, for example, when ethanol is shipped to a third country for dehydration or for blending with a small amount of additive, or when steel sheet is cut to length in a third country prior to importation into the United States.

Finally, the bill adds a new section 771(18)(D) to prevent the practice whereby a foreign producer alters the merchandise in minor respects in form or appearance to circumvent an outstanding order. This provision might apply when steel sheet is temper rolled prior to importation into the United States or when a fire resistance coating is applied to cookware prior to importation.

This provision creates a rebuttable presumption that an investigation or order on a completed, finished item of merchandise covers that merchandise even though it is altered in minor respects in form or appearance. This presumption of coverage is not disposed of solely because the altered product is classified under a different tariff category than the unaltered product. Rather, this would be one of a number of factors to be considered when determining whether an alteration results in a change in the class or kind of merchandise, and is therefore no longer a minor alteration. The bill allows Commerce to limit the presumption in any particular proceeding.

Reasons for change

The Committee is concerned about the increasing instances in numerous product sectors, of circumvention and evasion of antidumping findings and orders and countervailing duty orders. Under present law, parties subject to these orders have often been able to circumvent or evade the order by making slight changes in their method of production or shipment of merchandise destined for consumption in the United States. As a result, the existence of these "loopholes" has seriously undermined the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings, and frustrated the purpose for which these laws were enacted.

It is the Committee's strong belief that section 155 of the bill will effectively foreclose the most obvious and damaging circumvention practices that have been exploited by foreign producers, with respect to our antidumping and countervailing duty law. By clarifying the reach of an order or finding, and thereby increasing the effectiveness of the Administration's enforcement authority, this section will achieve two goals considered vitally important by the Committee. First, it will restore confidence to those persons injured or threatened with material injury as a result of dumped or subsidized imported products, that U.S. trade laws provide an effective remedy to unfair trade practices by foreign competitors, and will thereby encourage injured persons to utilize these laws to their maximum potential. Second, it will send a clear message to foreign producers and trading partners that we will actively seek to prevent circumvention of our trade laws, and thereby decrease the incentive foreign producers might have to "finesse" their way around our trade laws, in order to engage in recognized unfair trade practices.

Section 156. Diversionary Input Dumping

Present law

No provision. Under title VII of the Tariff Act of 1930, current law provides for antidumping duties to reflect the difference between the price at which a product under investigation is sold in the United States and the price at which it is sold abroad (foreign market value). Foreign market value is based on the price of such or similar merchandise in the home market, a third country market, or on constructed value. Unless the foreign market value is based on the constructed value approach, there is no scrutiny of the prices of materials or components which were incorporated into the imported product. The constructed value methodology does take into account costs of materials, but such costs are not, in turn, examined to determine whether the materials were purchased at less than fair value.

Explanation of provision

Section 156 of H.R. 3, as amended, amends the antidumping law to allow for diversionary input dumping to be taken into account in determining the foreign market value of a class or kind of merchandise subject to an antidumping proceeding.

Diversionary input dumping refers to the increased importation of a manufactured product which incorporates a dumped input. A dumped input means any class or kind of merchandise which was previously subject to an antidumping investigation which resulted in either an antidumping duty order, suspension of the investigation, or a termination based on a quantitative restriction agreement (provided that an affirmative preliminary determination of dumping was made prior to the termination). The diversionary input dumping provision of section 156 may be applied when a dumped input is purchased by a foreign manufacturer at a price less than its fair value, and is incorporated into a product which is then exported to the United States, and such merchandise is subject to an antidumping proceeding.

This provision is limited in its application, however, in three important ways. First, if the input product is currently subject to an antidumping order, there must have been a calculation of the input's foreign market value (either under section 735, section 736 or section 751) within the past six years. If the investigation on the input product was suspended, or terminated on the basis of a quantitative restriction agreement, then the preliminary affirmative determination of dumping must have occurred within the past six years.

Second, the input product must be routinely used as a major material or component in producing the merchandise under investigation, such that the cost of the input has a significant effect on the cost of producing the merchandise.

Third, there must be evidence of diversion occurring. That is, there must be evidence that imports of the input have declined since imposition of the antidumping order or quantitative restriction, while imports of the manufactured product have increased.

If the Commerce Department determines that diversionary input dumping is occurring, then it must base the foreign market value for the merchandise on its constructed value, and adjust the cost of the material or component which is the dumped input to reflect the amount of the competitive benefit bestowed upon the foreign manufacturer.

If there is an antidumping duty order currently in effect with respect to the dumped input product, then the foreign market value of the input product identified in such order shall be used in determining the existence and amount of diversionary dumping benefit.

If there is no antidumping duty order currently in effect, because the investigation was suspended, or terminated on the basis of a quantitative restriction agreement, then the value of the input product shall be based on the best available information, including any information gathered in the previous investigation of the input product and information contained in the petition.

Finally, if the Commerce Department finds that the information described above does not accurately reflect the competitive benefit bestowed on the manufacturer of the merchandise which is now the subject of an antidumping proceeding, then it may make an adjustment. This provision provides the Commerce Department with limited discretion to ensure that the value of the input used in the calculation of constructed value accurately reflects the competitive benefit bestowed on the manufacturer as a result of the purchase of such dumped input. For example, if the manufacturer purchased the relevant input at a price which was identical to the price at which fairly traded goods in that market were sold at the time of the purchase, then the manufacturer may have received no competitive benefit from such purchase of the input. It would be unfair to hold the manufacturer accountable to a higher "price" for the input than was realistically available to him for fairly traded goods. The Committee does not intend for the diversionary input dumping provision to be applied in a rigid, arbitrary manner which mandates unfair results. The "competitive benefit" provision is meant to meet concerns regarding fairness and equity.

Reasons for change

The Committee first focused its attention on the problem of diversionary input dumping during the 98th Congress, when it approved a provision in section 105 of H.R. 4784, the Trade Remedies Reform Act of 1984, to provide a remedy for what was then referred to as downstream dumping. The provision was dropped, however, in conference. During the Committee's deliberations on trade reform legislation in the 99th Congress, discussion of the problem resurfaced. The Committee attempted to create a remedy which would pose less administrative problems than earlier proposals, and approved a provision which became section 136 of H.R. 4800, however, that bill never became law.

The provisions in section 156 of H.R. 3, as amended, represent the Committee's latest attempt to fashion a workable remedy for the commercial problem of diversionary input dumping. The Committee is sensitive to criticisms relating to administerability and fairness of a diversionary input dumping remedy, and has attempted to address such concerns in the current provision. For example, there have been criticisms of earlier proposals relating to the staleness of data involved in previous dumping proceedings on the input product. The current provision of section 156 addresses this concern by requiring that there must have been, within the past six years, a calculation of the foreign market value of the input product—either in a preliminary or final determination of dumping with respect to the input, or a review of foreign market value pursuant to sections 736(c) or 751.

In an effort to address fairness concerns, the bill's provision includes authority for the Commerce Department to make adjustments to reflect the competitive benefit bestowed on the foreign manufacturer as a result of purchase of the relevant input. Such authority provides a reasonable opportunity for the interests of the foreign manufacturer to be taken into account to achieve a fair result.

It is the view of the Committee that these changes represent significant improvements to earlier proposals for a diversionary dumping remedy.

Section 157. Application of Countervailing Duty Laws to Nonmarket Economy Countries

Present law

The statutory language of section 303 and title VII of the Tariff Act of 1930 does not state whether or not they apply to non-market economy countries. In a recent court case, however, the U.S. Court of Appeals for the Federal Circuit upheld the Department of Commerce's refusal to apply the countervailing duty law in two investigations of carbon steel wire rod imports from Poland and Czechoslovakia, by holding that the countervailing duty law does not apply to non-market economy countries.*Georgetown Steel Corp.* v. *United States,* 801 F.2d 1308 (Fed. Cir. 1986).

Explanation of provision

Section 157 of H.R. 3, as amended, amends sections 303 and 701 of the Tariff Act of 1930 to provide for the application of the countervailing duty law to non-market economy countries *to the extent that* a subsidy can reasonably be identified and measured by the administering authority. The provision is intended to allow the administering authority discretion in determining, on a case-by-case basis, whether a particular subsidy can, as a practical matter, be identified and measured in a particular non-market economy country.

Reasons for change

The Committee is aware of, and sensitive to, the theoretical and administrative difficulties of applying the countervailing duty law, which is generally based on market-oriented principles, to countries whose economies are generally not market-oriented. Nevertheless, it is not the intent of the Committee to allow for nonmarket economy countries to be completely exempt from the countervailing duty law under all circumstances. The amendment approved by the Committee, therefore, is designed to provide for application of the countervailing duty law in those circumstances where a subsidy practice can reasonably be identified and measured.

It is the intent of the Committee that the administering authority make a good-faith effort in considering every petition filed and in conducting every investigation initiated involving allegedly subsidized imports from a non-market economy country, to determine whether a particular subsidy can be identified and measured. The administering authority, in making such a determination, should consider the particular type of practice which is an alleged subsidy, the circumstances in that country relating to the manufacture or exportation of the product in question, and the extent to which that general product sector in such country is market-oriented. If, for example, a government is providing export rebates or other financial incentives which are not provided to other industries and which are designed to promote exports of that particular product, such government intervention should be considered an export subsidy and be subject to the countervailing duty law—whether the country is a non-market economy country or a market economy country. If, however, it cannot be reasonably measured due to the circumstances of a particular non-market economy case, it is not the intent of the Committee to force the administering authority to make an affirmative subsidy finding.

Section 158. Access to Information

Present law

Under section 777 of the Tariff Act of 1930, the administering authority is permitted to make business proprietary information available under a protective order upon receipt of an application that describes the information requested and the reasons for the request. If the administering authority denies any request, application may be made to the Court of International Trade for an order directing that the information be made available. The Court may issue such an order subject to the appropriate sanctions.

Explanation of provision

Section 158 of H.R. 3, as amended, amends section 777 to clarify and improve the procedures for access to information submitted to the administering authority. The administering authority would decide which types of information should, as a general rule, be released under administrative protective order and, in each proceeding, consistently release the information of that type unless the administering authority determines, with respect to a particular submission of information, that disclosure under administrative protective order is not appropriate. In making a decision to release, the administering authority would balance the need of the party seeking the information to obtain it against the need of the submitter to protect the information from limited disclosure under administrative protective order. Even though the administering authority normally would release a particular type of information, there might be an unusual situation in a particular proceeding that would cause the administering authority to conclude that the need for protection from disclosure outweighs the need for disclosure. This provision would also be applicable with respect to the ITC's procedures for access to information.

Once the administering authority approves release under administrative protective order of designated types of information, the submitter will serve such information directly on counsel for the party which has the right to access under the administrative protective order. Only if the submitter believes there is a compelling and legitimate basis for denying disclosure of a particular submission, regardless of the fact that the administering authority has approved release of that general type of information, would the submitter not directly serve counsel for the other party. In that event, the submitter must provide the administering authority the statement described in subsection (b)(1)(B)(ii) at the time the information is submitted.

Section 158 also establishes reasonable time limits in which the administering authority is to determine each request for disclosure. If a submitter refuses to disclose information at the direction of the administering authority, the administering authority will return the submitted information to the party that submitted it and not consider it in the proceeding. If a submitter of information subject to administrative protective order does not submit with the information a certificate indicating that it has been served on counsel for a party entitled to receive it under such protective order (or the statement described in subsection (b)(1)(B)(ii)), the administering authority will not accept the submission. The submitter shall serve non-proprietary summaries of the information on all parties not entitled to receive the business proprietary information under protective order. The administering authority shall notify, within 14 days of receipt, all parties of submission of information from a party that is not a party to the proceeding. Finally, the proposal provides for return to the submitter of information which is submitted too late in a proceeding for adequate opportunity for comment.

Reasons for change

The changes made by section 158 are designed to improve the procedures for providing fair and timely access to information considered by the administering authority in antidumping and countervailing duty proceedings. The provision will reduce delays in administering authority decisions concerning applications for access to information under administrative protective order and the release of business proprietary information under protective order. Although the administering authority will still retain a limited amount of discretion to refuse to release certain types of information that are not relevant to dumping or subsidy determinations, it is the Committee's intent that, as a general rule most business proprietary information will be releasable under protective order. Particular exceptions might include trade secrets, customer names, and the names of consulting firms conducting market research. The stage in the proceeding at which the information is provided to the administering authority, e.g., at verification, is not dispositive of whether the administering authority must release the information.

By requiring service of all documents on parties to the proceeding, both the resources of the administering authority and other interested parties will be conserved. Also, by requiring service of all documents rather than just briefs or memoranda submitted to the administering authority, all parties will be notified on a timely basis of the information being submitted. Information subject to the service requirement should include but not be limited to comments, letters, computer print-outs, responses to questionnaires or inquiries by the administering authority, nonconfidential submissions and summaries.

The provision provides clear authority for the administering authority to reject information received after a reasonable deadline. It also requires the information submitted to the administering authority to be provided on a timely enough basis to permit comments by other parties. The setting of reasonable deadlines for submissions and the provision of comments on submissions should provide for a fairer and more efficient proceeding.

Section 159. Drawback Treatment

Present law

Under section 313 of the Tariff Act of 1930, duties paid on imported merchandise which is used in the manufacture of goods for export, may be refunded upon the exportation of such goods. To receive benefit of drawback, the completed article must have been exported within five years of the date of importation of the relevant duty-paid merchandise. The amount of refund is equal to 99% of the duties attributable to the foreign, duty-paid content of the exported article. Under section 779 of the Tariff Act of 1930, both antidumping and countervailing duties are treated as regular custom duties and thus are eligible for drawback.

Explanation of provision

Section 159 of H.R. 3, as amended, amends section 779 of the Tariff Act to prohibit antidumping and countervailing duties paid on imported merchandise from being eligible for refund under drawback provisions.

Reasons for change

Under section 622 of the Trade and Tariff Act of 1984, the Congress expanded the provisions relating to drawback to include countervailing duties as well as antidumping duties (which were already covered). The provisions of section 159 are intended to overrule action taken in 1984. This reversal is a reflection of the vigor and commitment which this Committee has to strict enforcement of unfair trade laws and to discouraging the continuing use of unfair trade practices.

The provisions of current law which allow for antidumping and countervailing duties to be refunded under drawback are counterproductive to efforts to discourage dumping and subsidization. If U.S. parties are allowed to buy dumped and subsidized goods at dumped and subsidized prices (which is essentially what the current drawback provisions allow) then dumping and subsidization will continue. All imports of dumped or subsidized merchandise, regardless of who is importing it, or for what purposes, must be subject to appropriate antidumping or countervailing duties.

Section 160. Application of Antidumping and Countervailing Duties to Governmental Importations

Present law

No provision.

Explanation of provision

Section 160 of H.R. 3, as amended, adds a new section 780 to the Tariff Act of 1930, which provides that any merchandise imported by, or for the use of, an agency of the U.S. Government is not exempt from the imposition of antidumping or countervailing duties.

Reasons for change

The purpose of this provision is to clarify that governmental importations, even if classified under TSUS Schedule 8 and therefore not subject to regular customs duties, are nevertheless subject to antidumping and countervailing duties. It has come to the attention of the Committee that purchases by the General Services Administration of imported titanium sponge for the National Defense Stockpile were exempted from payment of antidumping duties. The Committee feels that any exemption of the payment of antidumping or countervailing duties on imported goods is inconsistent with the Government's policies against unfair trade practices. The Government is obligated to enforce vigorously the unfair trade laws, even as applied to its own activities.

The Committee does not intend for this provision to be applied in a manner inconsistent with the international obligations of the United States. It has come to the attention of the Committee that certain Memoranda of Understanding or other international agreements negotiated by the Department of State may contain provisions which conflict with this amendment. To the extent that may be the case, the Committee expects that the Department of State will pursue renegotiation of those provisions to ensure the consistency of our international obligations with respect to section 160 of this bill as amended.

Section 161. Certification of Submissions

Present law

No provision.

Explanation of provision

Section 161 of H.R. 3, as amended, amends title VII of the Tariff Act of 1930 to require any person submitting factual information to the Department of Commerce or the ITC in connection with an antidumping or countervailing duty investigation, on behalf of a petitioner or interested party, to certify that such information is accurate and complete to the best of that person's knowledge. For purposes of this section, "factual information" means any data or statement of fact filed with or presented to the administering authority or the Commission during an antidumping or countervailing duty proceeding. It includes information submitted in support of a petition, responses to questionnaires, and data or statements of fact in support of allegations.

Reasons for change

There is no requirement under current law that persons submitting factual information certify the accuracy of such information. To the extent that the party providing the information may not necessarily be the same party who prepared the information, or who will be directly affected by the outcome of the investigation, the incentive to provide accurate and complete submissions may be absent.

The purpose of this provision is to ensure that proceedings under title VII are not initiated or conducted based on frivolous allegations and arguments which are either not supported by the facts alleged or which omit important facts known or reasonably available to the party making the submission of fact. The certification should state that the submitter, and the submitter's legal representative, if applicable, has read the submission and, to the best of their knowledge or belief, the information contained in the submission is complete and accurate.

Section 162. Explanation of Deviations From Precedent

Present law

No provision.

Explanation of provision

Section 162 of H.R. 3, as amended, requires the administering authority, as part of each final determination, to explain each significant deviation from established administrative practice.

Reasons for change

It has come to the attention of the Committee that the administering authority has treated the same issues in different cases in different ways, without justifying such change in treatment. As a result, there is little predictability in the decision-making process. This amendment is an attempt to provide greater accountability to the Commerce Department's decisions and treatment of issues which have an impact on those decisions. It does not reduce the Department's authority to base its determinations on the facts of each case, but does require the Department to explain and justify any deviations in its rationale, to improve the predictability of administrative practice. The Committee recognizes that there may be instances where the facts of a given case and experience gained by the administering authority may warrant a departure from existing precedent. When such instances occur, however, the Committee expects the administering authority to explain fully its rationale for departing from such precedent.

Section 163. Correction of Ministerial Errors

Present law

No provision.

Explanation of provision

Section 163 of H.R. 3, as amended, requires the administering authority to provide for correction of ministerial errors within a limited time after issuance of final determinations, after providing opportunity for comment by interested parties.

"Ministerial errors" are defined as "errors in addition, subtraction or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other alleged error which the administering authority determines to be ministerial."

Reasons for change

It has come to the Committee's attention that certain final determinations contain clerical and other errors which are not corrected, under current procedures, unless the parties to the proceedings resort to judicial review of the final determination. The result is expensive litigation that unnecessarily burdens the court system, in order to correct essentially unintended errors. Therefore, the Committee has adopted this provision to allow for the correction of ministerial errors in final determinations within a limited time period after their issuance.

Section 164. Downstream Product Monitoring

Present law

No provision.

Explanation of provision

Section 164 of H.R. 3, as amended, adds a new section 781 to the Tariff Act of 1930 to provide for the monitoring of imports of certain downstream products. The provision would require the ITC to monitor the volume of imports of certain downstream products which are designated by the Department of Commerce for monitoring. The ITC would publish quarterly reports on trade in monitored products, and if imports of any monitored product increase more than 5% over the previous quarter, the ITC shall further analyze such increase in the context of overall economic conditions in that product sector (taking into account such factors as seasonal variations).

Downstream products which may be considered for monitoring include any manufactured product into which is incorporated a component part. A component part is defined as any imported article which (a) during the previous five years, has been subject to an antidumping or countervailing duty order or suspension agreement with respect to which a dumping margin or net subsidy of 15% or more was estimated, and (b) due to its inherent characteristics, is routinely used as a major part, material, component, assembly or subassembly in other manufactured products.

Domestic producers of articles like a component product or a downstream product may petition the Commerce Department to designate a downstream product for monitoring. Such request must identify the relevant downstream product to be monitored, the relevant component part, and state the reasons for suspecting the likely diversion (as a result of the imposition of antidumping or countervailing duties on the component part), of foreign production and exportation to the United States of component parts to downstream products.

The Commerce Department must review all petitions for designation, and determine within 14 days whether imports of a downstream product should be monitored. Such determination shall be based on whether there is a reasonable likelihood that imports of a downstream product may increase as a result of diversion related to the imposition of duties on the component part. In making this determination, the Commerce Department may consider, if appropriate, such factors as (a) the value of the component part in relation to the value of the downstream product; (b) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and (c) the relationship between foreign producers of the component product and foreign producers of the downstream product.

Determinations made by the Commerce Department with respect to designation of products to be monitored shall be published in the Federal Register, and transmitted to the ITC with an identification of products by TSUS item number or other available designation. Any determination with respect to the designation of a product to be monitored shall not be subject to judicial review.

The Commerce Department is required to consider the information contained in the ITC monitoring reports, in determining whether an investigation is warranted under the antidumping or countervailing duty law with respect to imports of a downstream product.

If the Commerce Department further determines that monitoring is no longer appropriate because imports of the downstream product are not increasing and there is no longer a reasonable likelihood of diversion, it may request the ITC to cease monitoring imports of such product.

Reasons for change

The Committee has long been concerned about the downstream effects of the dumping or subsidization of goods which are incorporated into, or used in the manufacture or production of, other goods which are then traded in international markets. The provisions enacted into law in 1984 as section 771A of the Tariff Act (see section 613 of the Trade and Tariff Act of 1984) relating to upstream subsidies, are one result of this concern. The provisions relating to diversionary input dumping in section 156 of this bill are similarly meant to address yet another aspect of this problem.

Section 164 is designed to complement these provisions, by providing a means for diversionary input dumping and upstream subsidization to be detected before its effects devastate U.S. industries. Domestic producers of component parts or of downstream products, who would have reason to know of the risks of diversion taking place in light of their experience in the marketplace, would have the opportunity to petition the Commerce Department for designation of products to be monitored.

The Commerce Department is granted substantial discretion in determining whether a product should be so designated, but the Committee expects the Commerce Department to approve such designations whenever there is a *reasonable likelihood* that diversion will occur. Certainty, or even probability, of diversion is not required. The Commerce Department, in making its determination should consider all factors which are relevant to this issue. Such factors may include, for example, the value of the component part in relation to the value of the downstream product; the greater this proportion, the greater the likelihood of diversion. Another factor which may be relevant is the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; the less transformation, the greater the likelihood of diversion. Still another factor which may be relevant is the relationship between foreign producers of the component part and foreign producers of the downstream product; the closer the relationship, the greater the likelihood of diversion.

The ultimate purpose of the monitoring program is to provide an early warning signal of actual diversionary practices. The Committee expects the Commerce Department to consider the information obtained as a result of the monitoring, as well as other available information, in determining whether an antidumping or countervailing duty investigation with respect to a downstream product may be warranted.

Section 165. Multiple Offenders

Present law

Present law makes no distinction between parties who are subject to one dumping order and parties who are subject to multiple dumping orders. Section 732(a)(2) of the Tariff Act of 1930 does provide authority for the Commerce Department to establish a monitoring program with respect to imports of the same class or kind of merchandise from additional supplier countries if there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping. This provision, which was added to the law by the Trade and Tariff Act of 1984, involves monitoring imports of the same product from different sources, however, and does not focus on persistent dumping from the same source with respect to different products.

Explanation of provision

Section 165 of H.R. 3, as amended, establishes new procedures for monitoring imports of products manufactured by a "first offender" (a foreign manufacturer who has been assigned a final dumping margin in a dumping order or under a suspended investigation), a "second offender" (a foreign manufacturer who has twice been assigned a final dumping margin within the same product category within a ten-year period) or a "multiple offender" (a foreign manufacturer who has been assigned a final dumping margin within the same product category three or more times in a ten-year period).

Under section 165, a U.S. manufacturer may request the Commerce Department to monitor imports of products from a first offender. Upon receiving a request for monitoring from an eligible party, the Commerce Department would direct the ITC to establish a "product monitoring category." Within 90 days, the Commission, after providing an opportunity for presentation of views (including a public hearing, if requested) would establish such a category.

In establishing appropriate product categories, the Commission would designate by appropriate TSUS item numbers, those articles which are manufactured or produced by similar processes and that have similar uses. It is the Committee's intention that the term "product monitoring category" be defined much more broadly than "like or directly competitive" products, but not so broad as to include products between which major differences exist. Where there is a common primary manufacturing process, the groups of products resulting from that process should clearly be considered part of the same product category. For example, all steel mill products should be included within a single product category, regardless of the shape of that mill product (e.g. plate, strip, sheet, bar, rod, pipe or tube). All semiconductors, including but not limited to 64K DRAM, 256K DRAM, and erasable programmable read only memories, should be in the same product category. All land mobile radio products, including but not limited to pocket pagers and cellular mobile telephones, should be in the same product category.

Once the ITC has established a product monitoring category, it would notify the Commerce Department and publish notice in the Federal Register. If the Commerce Department determines that there is a reasonable likelihood that dumping of products within such product category may occur, then it shall monitor imports of products within the product category from the first offender. Monitoring should include, to the extent practicable, the gathering of such trade, price, and cost as may be necessary to ascertain whether or not dumping may be occurring. If information obtained as a result of the monitoring indicates that dumping of a particular product may be occurring, then Commerce must self-initiate an expedited dumping investigation, to be completed on a shorter timetable than current law. Commerce would already have substantial data as a result of the monitoring program. Both the Commerce Department and the ITC should take all feasible steps to ensure that the investigation is completed as rapidly as possible, preferably within 280 days.

In any such expedited dumping investigation, there would be an automatic finding of critical circumstances. Furthermore, ITC would be required, in determining whether there is material injury by reason of the dumped imports, to take into account the effects of prior dumping by the same offender.

After the second affirmative finding of dumping against the same foreign manufacturer ("second offender") within a ten-year period, the Commerce Department must automatically monitor all imports from that manufacturer within the designated product category, and must self-initiate expedited dumping investigations if information obtained as a result of monitoring indicates that dumping may be occurring.

After the third affirmative finding of dumping against the same foreign manufacturer ("multiple offender") within a ten-year period, Commerce must automatically monitor all imports from such manufacturer within the designated product category and within related product categories, and must self-initiate expedited dumping investigations if information obtained as a result of monitoring indicates that dumping may be occurring. Furthermore, under section 165 of the bill, a rebuttable presumption of "intent to injure or destroy" would arise in any civil action for single damages against a multiple offender (see section 165).

Reasons for change

During the past several decades, a number of important U.S. industrial sectors have been severely injured as a result of a pattern of repeated dumping by certain foreign manufacturers.

In electronics, for example, since 1970 a number of Japanese firms have repeatedly been found by the U.S. Government to have engaged in injurious sales below fair market value in the U.S. market. Dumping by these Japanese firms has played an important role in the contraction of the U.S. consumer electronics and semiconductor industries. A similar pattern is observable in other sectors, such as steel, where numerous instances of repeated dumping by the same firms have occurred since 1980.

This widespread pattern of recurrent dumping demonstrates that the U.S. antidumping laws do not constitute an adequate deterrent to dumping. Foreign companies intent on securing a larger share of the U.S. market through dumping have made the judgment that commercial gains to be made by dumping outweigh any costs which might be incurred as a result of the application of the U.S. antidumping laws.

Recent developments in the semiconductor industry demonstrate how severe this problem can become if it remains unchecked. In 1986, the Commerce Department found that four Japanese companies were dumping 64K dynamic random access memories (DRAMs); all of these firms had previously been found to have engaged in dumping in other electronics sectors, such as telecommunications and television receivers. The Commerce Department preliminarily found in separate investigations that these and several other Japanese firms were also dumping 256K DRAMs and erasable programmable read only memories (EPROMs). During the period of these investigations, most U.S. companies ceased to manufacture DRAMs altogether—in effect, this important segment of the U.S. semiconductor industry largely ceased to exist. In EPROMs, the Commission found that U.S. firms have sustained major operating losses.

It is the Committee's intent that the provisions of section 165, together with sections 166 and 167 of the bill, provide for greater deterrence of pernicious dumping and faster relief against repeat dumping activities.

Section 166. Civil Actions for Recovery of Damages

Present law

A private remedy for persistent dumping with the intent of injuring or destroying a U.S. industry exists under present law in the Antidumping Act of 1916. Section 801 of the Act of September 8, 1916 (15 U.S.C. 72) makes it unlawful for any person importing or assisting in importing any articles from any foreign country into the United States commonly and systematically to import, sell, or cause to be sold articles at less than their actual market value with the intent of injuring or destroying a U.S. industry. A person injured by such conduct may bring a treble damages action in Federal district court. Criminal penalties may also be imposed against a guilty party.

Explanation of provision

Section 166 of H.R. 3, as amended, would modify the 1916 statute in several important respects. First of all, it would decriminalize the statute so that only civil actions can be brought thereunder. Second, it would establish a rebuttable presumption of "intent to injure a U.S. industry" in cases brought under the statute against a foreign manufacturer who is a "multiple offender" as defined under section 165 of this Act. Damages in such a case, however, would be limited to single damages rather than the treble damages currently provided under the statute. Finally, the provision would clarify that the term "actual market value" means the same as "foreign market value" as determined under section 773 of the Tariff Act of 1930.

It is the view of the Committee that repeated acts of dumping by the same party which result in three or more final determinations within a ten-year period establish a strong *prima facie* case that the defendant clearly intended to injure or destroy a U.S. industry. In such a case, the evidence (existence of three or more final determinations within ten years) of intent is strong, and the burden should clearly be on the manufacturer-defendant to overcome this presumption with compelling evidence.

The clarification with respect to the term "actual market value" in section 166 is also an important improvement to the 1916 statute, in light of a court decision narrowly interpreting that term. The court held that a cause of action does not exist under the statute unless there are actual sales and actual prices in both the domestic and foreign markets. The amendment provided under section 166 would permit the use of a constructed value, for example, under section 773 of the Tariff Act when necessary in order to establish that predatory pricing is occurring.

Reasons for change

Under current law, opportunities are limited for domestic parties that are injured by dumped imports to be compensated for the injury caused by dumping. The antidumping statute administered by the Department of Commerce does not provide for any compensation to be paid to private parties. The Antidumping Act of 1916 has long provided a private right of action for recovery of damages. Because of various difficulties in interpretation, however, despite the fact that a number of civil actions have been brought, no plaintiff has ever recovered damages under the 1916 Act.

Perhaps the principal obstacle to recovery for plaintiffs has been the requirement that they show that the defendant intended to injure or destroy a U.S. industry. Evidence of intent needed by the plaintiff to satisfy its burden of proof is generally in the possession of the defendant or defendants. Pretrial discovery on the issue of intent has been inhibited by the Act's criminal penalties. Because of the intent requirement and the criminal sanctions, the plaintiff in a civil case confronts what may well be an insurmountable obstacle to successful pursuit of an action.

The amendments in section 166 of this bill address these problems in two ways. First, the criminal provisions of the 1916 Act are repealed. Second, the bill establishes a rebuttable presumption of intent with respect to "multiple offenders", as defined elsewhere under section 165. The rebuttable presumption arises where a pattern of systematic dumping by the defendant has already been established as a result of at least three antidumping investigations within the same general product area. It is reasonable to presume that in such cases, involving systematic and repeated dumping, that the defendant intended the natural consequences of his actions. Application of the rebuttable presumption, however, would only entitle the plaintiff to single damages for the full amount of economic loss attributable to the persistent dumping.

The Committee believes that the amendments made by this section, together with those in sections 165 and 167, accomplish the objectives of providing an effective deterrent to dumping and providing for compensation to injured parties under appropriate circumstances.

Section 167. Compensation Program

Present law

No provision.

Explanation of provision

Section 167 provides for the establishment of a separate account, to be funded by dumping duties, which would be available to compensate domestic producers who have been injured by reason of dumped imports. The International Trade Commission, which has expertise in examining issues relating to injury by reason of imports, would be required to determine whether a particular domestic producer has been so injured and by what amount, and shall certify its eligibility for compensation. The Secretary of the Treasury would distribute the proceeds in the separate account to certified injured parties.

Reasons for change

This provision is intended to provide a mechanism to help domestic companies who are injured by foreign goods which are dumped in the U.S. market to receive some compensation for the injury suffered. Under current law, duties are collected to offset the injurious effects of dumping, but the duties do not benefit the victims of such injurious dumping. Although the Committee recognizes that the amount of duties collected may not be sufficient to compensate fully all parties injured by dumping, it is the view of the Committee that such funds should be channelled back to the injured parties to the extent possible.

Section 168. Injury Test for Certain Merchandise Subject to a Countervailing Duty Order Under Section 303

Present law

Section 303 of the Tariff Act of 1930 provides the statutory authority for the Department of Commerce to impose countervailing duties on merchandise that is not the product of a country under the GATT Agreement on Subsidies and Countervailing Measures (within the meaning of section 701(b) of the Tariff Act). Under section 303, the Department of Commerce can impose countervailing duties on dutiable merchandise without a finding of injury by the ITC. However, section 303(e) provides that in the case of duty-free imports, countervailing duties may be imposed only if there is an affirmative ITC injury determination, unless such a determination is not required by U.S. international obligations.

There are two circumstances under which merchandise subject to an outstanding countervailing duty order under section 303 can subsequently become subject to the provisions of subsection (e): either the merchandise becomes duty-free, or the merchandise is duty-free and the country in which it was manufactured or from which it was exported joins the GATT or enters into a similar "international obligation."

The statute is silent as to how, and by what authority, an injury test can be performed where the requirement of an injury test arises after a countervailing duty order has been issued. The ITC has construed this statutory silence to mean that it lacks authority to conduct an injury investigation on merchandise already subject to a countervailing duty order unless the merchandise was subject to a previous injury investigation. The statute is similarly silent regarding appropriate procedures in a pending countervailing duty investigation which involves merchandise that, subsequent to initiation, becomes entitled to an injury determination.

Explanation of provision

Section 168 of H.R. 3, as amended, amends section 303 to provide the ITC with clear authority to conduct an investigation of material injury in such instances involving outstanding countervailing duty orders or pending investigations.

The Department of Commerce shall notify the ITC whenever the USTR determines that the international obligations of the United States require an injury determination with respect to merchandise covered by an outstanding order for which there was no injury determination. Within 180 days after the date of the notice the ITC will make a material injury determination by reason of imports of the duty-free merchandise subject to the outstanding order if that order were revoked. The determination will have the same force and effect as a final determination under section 705(b) of the Tariff Act, including applicable judicial review. Pending receipt of the determination, liquidation of entries on or after the date of the liquidation notice will be suspended and the outstanding order will remain in effect.

If the ITC determination is affirmative, the order will remain in effect until revoked under section 751(c) of the Tariff Act. If the determination is negative, the order will be revoked with respect to entries of the merchandise on or after the date of the injury requirement notice.

Similarly, the amendment authorizes the ITC to conduct an injury investigation in pending investigations. The amendment provides for the necessary procedural adjustments, such as an extension of various timetables, in order to perform an injury test.

Reasons for change

The amendment will enable the United States to continue to collect countervailing duties on imports previously determined to be unfairly subsidized without contravening any U.S. international obligations. The Committee expects the USTR to make a thorough examination of U.S. international obligations to determine whether they do, in fact, require an injury test in each case, in order to make certain that an injury investigation is the only alternative to possible revocation or nonissuance of a countervailing duty order.

This amendment is also necessary in order to clarify the procedures that should be followed when merchandise subject to a pending countervailing duty investigation becomes entitled to an injury determination. It provides the Commission with clear authority to conduct an injury investigation in such instances and it enables the Department of Commerce to continue with an investigation pending receipt of the Commission's determination.

Section 169. Studies

Study of Market Orientation of China

Present law

No provision.

Explanation of provision

Section 169(a) of H.R. 3, as amended, requires the Secretary of Commerce to undertake a study and to report back to the Congress, within 12 months of enactment, on the economic reforms being undertaken by the government of the People's Republic of China with respect to market orientation, the effect of the new orientation on market policies, price structures and the relationship between domestic Chinese prices and world prices. The Secretary must also report on the application of U.S. trade laws to China, including any recommendations for changes to deal more appropriately with countries in transition to more market-oriented economies.

Reasons for change

In the course of the Committee's consideration of H.R. 3, questions arose as to whether the People's Republic of China is a nonmarket economy, a market economy or a mixed economy in a transitional stage. Such distinctions are important given the differential treatment that U.S. trade laws afford market and non-market economies.

The appropriate treatment under U.S. trade laws of China, as well as other countries that may be in transition from non-market to market economies, is an issue which is likely to have significance for U.S. trade policy decisions in the future. Therefore, the Committee has requested this study in order to establish an accurate record of information on which to consider future changes in U.S. trade policy towards China and other mixed economies.

USTR Study of Subsidies Code Commitments

Present law

No provision. Under section 701(b) of the Tariff Act of 1930, "country under the Agreement" includes a country which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the GATT Subsidies Code. Countervailing duty investigations with respect to imports from a "country under the Agreement" include an injury test prior to imposition of countervailing duties.

Explanation of provision

Section 169(b), of H.R. 3, as amended, requires USTR to begin, within 90 days of enactment, a review of subsidies commitments undertaken by other countries with the United States, and to report to the Committee on Ways and Means and the Committee on Finance on the results of such review within six months of its commencement.

The review shall include an evaluation of whether such commitments have been met, if not, the probable time frame for compliance; and, where appropriate, recommendations on how to improve the elements or implementation of such commitments.

Reasons for change

Under a subsidy commitment agreement entered into by a country with the United States, the foreign country receives the benefit of an injury test in a U.S. countervailing duty proceeding. In return, the country commits itself to the elimination of various subsidy practices.

There has been increasing concern within the Committee as to current subsidy commitments in two respects. First, questions exist as to the degree to which some countries have honored their commitments to eliminate subsidy practices. Second, with respect to those countries which do not honor their subsidies commitments, it is unclear whether the United States is utilizing effective sanctions to bring such countries back into conformity with such obligations. Therefore, the Committee feels it is necessary to study the arrangements which are currently in force, in order to determine how the commitments policy can be improved to accomplish its original objectives.

Subtitle E—Intellectual Property Rights

Subtitle E contains several provisions which are designed to strengthen U.S. intellectual property right protection both domestically and internationally. The Committee places great importance on this issue because it believes that the technology and innovativeness of U.S. companies is unparalleled in the World. However, without adequate protection of such intellectual property rights, U.S. companies are at a significant disadvantage in competing in the world market place. This subtitle sets forth Congressional findings and purposes; amends section 337 of the Tariff Act of 1930; and creates a mechanism for establishing adequate and effective protection of U.S. intellectual property rights in foreign countries.

Section 171. Congressional Findings and Purposes

Present law

No provision.

Explanation of provision

Section 171 sets forth a number of Congressional findings and purposes with regard to U.S. intellectual property rights, including the need—

(1) to amend section 337 of the Tariff Act of 1930 to make it a more effective remedy for the protection of U.S. intellectual property rights; and

(2) to provide for the development of an overall strategy to ensure adequate and effective international protection for U.S. persons that rely on protection of intellectual property rights.

Reasons for change

This provision was included to highlight the importance that the Committee attaches to improving both domestic and international protection of U.S. intellectual property rights.

Section 172. Protection Under the Tariff Act of 1930

Injury to "Efficiently and Economically Operated" U.S. Industry

Present law

Section 337 of the Tariff Act of 1930 provides for relief against unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale, if the effect or tendency of such actions is to destroy or substantially injure an efficiently and economically operated industry in the United States.

The U.S. International Trade Commission has the responsibility under section 337 to conduct an investigation of any alleged violation of this provision either upon a complaint being filed by an interested party or upon its own motion. If the Commission finds that a violation of this statute has occurred and determines that such relief is justified after considering the effect "upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States and United States consumers", it may provide relief in the form of an exclusion order or a cease and desist order.

Explanation of provision

Section 172 amends section 337 of the Tariff Act of 1930 in several important respects. First of all, it eliminates the need to demonstrate injury to, or the prevention of the establishment of, an industry in the United States for certain intellectual property rights cases. Those cases involve registered mask works and intellectual property which is protected by a valid and enforceable United States patent (including products and processes), copyright, or registered trademark. Examples of cases not affected by this change include trade secrets, commonlaw trademarks, false advertising, and antitrust violations. Secondly, section 172 eliminates in all cases the requirement to establish that an industry in the United

States is "efficiently and economically operated." Finally, although the injury standard would be eliminated, complainants in intellectual property rights cases would have to demonstrate that an industry in the United States relating to the articles or intellectual property right concerned "exists or is in the process of being established."

The changes described above relating to statutory intellectual property rights cases would apply to:

1. The importation into the United States, or the sale by the owner, importer, consignee, or agent of either, of articles that—
    a. infringe a valid and enforceable United States patent or a valid United States copyright registered under title 17, United States Code; or
    b. are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent;
2. The importation into the United States, or the sale by the owner, importer, consignee, or agent of either, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946; and
3. The importation, or the sale by the owner, importer, consignee, or agent of either, of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.

In such intellectual property rights cases, an industry in the United States is considered to exist if there is, with respect to the articles protected by the patent, copyright, trademark, or mask work concerned, in the United States,—

1. significant investment in plant and equipment;
2. significant employment of labor or capital; or
3. substantial investment in its exploitation, including engineering, research and development, or licensing.

Reasons for change

The fundamental purpose for the amendments made by section 172 is to strengthen the effectiveness of section 337 in addressing the growing problems being faced by U.S. companies from the importation of articles which infringe U.S. intellectual property rights.

Infringing imports were not the primary concern of Congress when section 337 was initially enacted in 1922. As indicated by the scope of its language, section 337 was designed to cover a broad range of unfair acts not then covered by other unfair import laws. However, over the years, patent, copyright, and trademark infringement were recognized as unfair practices within the meaning of the section 337, and today, section 337 is predominantly used to enforce U.S. intellectual property rights. According to a 1986 Government Accounting Office (GAO) study, 95 percent of the section 337 cases initiated since 1974 involve statutory intellectual property rights. The Committee believes that the injury and efficient and economic operation requirements of section 337, designed for the broad context originally intended in the statute, make no sense in the intellectual property arena.

Unlike dumping or countervailing duties, or even other unfair trade practices such as false advertising or other business torts, the owner of intellectual property has been granted a temporary statutory right to exclude others from making, using, or selling the protected property. The purpose of such temporary protection, which is provided for in Article I, Section 8, Clause 8 of the United States Constitution, is "to promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their respective Writings and Discoveries." In return for temporary protection, the owner agrees to make public the intellectual property in question. It is this trade-off which creates a public interest in the enforcement of protected intellectual property rights. Any sale in the United States of an infringing product is a sale that rightfully belongs only to the holder or licensee of that property. The importation of any infringing merchandise derogates from the statutory right, diminishes the value of the intellectual property, and thus indirectly harms the public interest. Under such circumstances, the Committee believes that requiring proof of injury, beyond that shown by proof of the infringement of a valid intellectual property right, should not be necessary.

The Committee recognizes that in very few cases have complainants actually been denied relief because of failure to meet the economic tests relating to injury and economically and efficiently operated industry. However, the Committee is concerned that, because of these economic tests, some holders of U.S. intellectual property rights who seek relief from counterfeit or infringing imports are denied access to section 337 relief. Since 1974, according to GAO's survey, 11 complainants have been unable to meet all of the economic criteria and 6 of them were denied relief solely for this reason. The GAO survey further indicated, however, that firms have terminated their proceedings or accepted settlement agreements which they judged not in their best interests because they could not meet all of the statute's economic tests. It has been claimed that many firms may even have been discouraged from initiating proceedings because of these tests. Further, the cost of section 337 litigation is extremely high (ranging from $100,000 to $1 million with a few costing as much as $2.5 million according to GAO) and the legal costs of satisfying the economic criteria are reportedly equal to more than half of the total litigation expenses, thus further discouraging the use of section 337 to address the problem of counterfeit imports.

The Committee notes that in adopting section 172, it is effectively eliminating the requirement that the domestic industry be "economically and efficiently operated" and the requirement that the infringement have the tendency or effect of destroying or substantially injuring the domestic industry from section 337 as it applies to intellectual property cases. The Committee does not intend that the USITC or the USTR will reintroduce these requirements in making their public interest determinations.

Although the injury test has been eliminated for certain intellectual property rights cases, a complainant must establish that a U.S. industry relating to the articles or intellectual property right concerned "exists or is in the process of being established." This requirement was maintained in order to preclude holders of U.S. intellectual property rights who have no contact with the United States other than owning such intellectual property rights from utilizing section 337. The purpose of the Commission is to adjudicate trade disputes between U.S. industries and those who seek to import goods from abroad. Retention of the requirement that the statute be utilized on behalf of an industry in the United States retains that essential nexus.

The Committee is concerned, however, that in some recent decisions the Commission has interpreted the domestic industry requirement in an inconsistent and unduly narrow manner. In order to clarify the industry standard, a definition is included which specifies that an industry exists in the United States with respect to a particular article involving an intellectual property right if there is, in the United States,—

1. significant investment in plant and equipment;
2. significant employment of labor or capital; or
3. substantial investment in the exploitation of the intellectual property right including engineering, research and development or licensing.

The first two factors in this definition have been relied on in some Commission decisions finding that an industry does exist in the United States. The third factor, however, goes beyond ITC's recent decisions in this area. This definition does not require actual production of the article in the United States if it can be demonstrated that significant investment and activities of the type enumerated are taking place in the United States. Marketing and sales in the United States alone would not, however, be sufficient to meet this test. The definition could, however, encompass universities and other intellectual property owners who engage in extensive licensing of their rights to manufacturers.

The phrase "or in the process of being established" with regard to the industry requirement recognizes that there may be situations where, under the above definition, an industry does not "exist" but a party should be entitled to bring a 337 action. For example, if a new product is developed in the United States and is protected by a U.S. intellectual property right, the owner of the intellectual property right would not have to wait to bring an action under section 337 until he can satisfy the definition of industry, if he can demonstrate that he is taking the necessary steps to establish such an industry in the United States.

The mere ownership of a patent or other form of protection would not be sufficient to satisfy this test. The owner of the property right must be actively engaged in steps leading to the exploitation of the intellectual property, including application engineering, design work, or other such activities. The Commission should determine whether the steps being taken indicate a significant likelihood that the industry requirement will be satisfied in the future. Because this statute is not intended to protect holders of U.S. intellectual property rights who have only limited contact with the United States, the Committee does not want to see this language used as a loophole to the industry requirement. The Committee does intend this language, however, to protect from infringement those holders of U.S. intellectual property rights who are engaged in activities genuinely designed to exploit their intellectual property within a reasonable period of time.

Finally, it is noted that the changes in this section are not intended to change existing law or practice regarding parallel imports or gray market goods. The substantive rights of intellectual property right owners with respect to this issue are unaffected by these amendments, since the underlying statutes governing patents, copyrights, trademarks or mask works have not been changed. The law to be applied in section 337 cases raising this issue is the law as interpreted by United States courts.

Termination of Investigation by Consent Order or Settlement Agreement

Present law

No provision.

Explanation of provision

Section 172(a)(2) amends section 337(b)(1) of the Act to authorize the Commission to terminate investigations, in whole or in part, by issuing consent orders or on the basis of settlement agreements.

Reasons for change

The Commission has for a number of years terminated section 337 investigations in these ways without making a determination regarding whether the statute has been violated, under authority derived from the Administrative Procedure Act, specifically 5 U.S.C. subsection 554(c)(1). The amendment to section 337(b)(1) provides express authority in the Act for such terminations. It is intended to put to rest any lingering doubts regarding the Commission's authority to terminate investigations by issuance of consent orders or on the basis of settlement agreements without making a determination regarding violation of the statute.

Exclusion of Articles During Investigation

Present law

Under section 337, the Commission is empowered to issue both temporary and final exclusion orders prohibiting the entry of merchandise. There are no time limits for the issuance of temporary exclusion orders, however.

Explanation of provision

Section 172(a)(3) amends subsection (e) of the Act (1) to require the Commission to rule on petitions for a temporary exclusion order within 90 days (150 days in more complicated cases) of publication of the Commission's notice of investigation in the *Federal Register*; (2) to authorize the Commission to require the petitioner to post a bond as a prerequisite to the issuance of a temporary exclusion order, and (3) to authorize the Commission to grant preliminary relief in cases involving alleged patent, copyright, registered trademark, or mask work infringement to the same extent as preliminary injunctions and temporary restraining orders may be issued by the federal district courts. If the Commission later determines that the respondent has not violated provisions of this Act, the bond may be forfeited to the respondent. This section authorizes the Commission to prescribe by rule the terms and conditions under which the bond may be awarded to the respondent.

Reasons for change

Experience under the present statute has shown that the Commission sometimes provides temporary relief to complainants too late to benefit them. This section addresses this problem by amending subsection (e) of the Act to require a Commission determination regarding issuance of a temporary exclusion order within 90 days (150 days in more complicated investigations) of institution of the investigation. It is expected that the Commission will decide whether to issue such orders using the standards and procedures employed by the federal district courts when they decide whether to issue preliminary injunctions. In making this change, the Committee is codifying existing Commission practice in this regard. It is not the Committee's intent to create a separate standard for other causes of action under section 337.

Section 172 also authorizes the Commission to require the complainant to post a bond as a prerequisite to the issuance of a temporary exclusion order. The purpose of complainant's bond is to hold the respondents harmless if it is later determined by the Commission that there is no violation of the Act. If forfeited, complainant's bond is to go to the respondents, according to rules to be developed by the Commission.

Finally, in cases involving alleged patent, copyright, registered trademark, or mask work infringement, the section authorizes the Commission to grant preliminary relief to the same extent as preliminary injunctions and temporary restraining orders are granted by federal district courts under the Federal Rules of Civil Procedure.

Cease and Desist Orders

Present law

Section 337(f) provides for the Commission's use of cease and desist orders "in lieu of" the exclusion of articles. Penalties for the violation of such orders are set at the greater of $10,000 or the domestic value of the articles.

Explanation of provision

Section 172(a)(4) amends section (f)(1) of the Act in two respects. It authorizes the Commission to issue cease and desist orders *in addition to* exclusion orders and it raises the penalty for violation of such orders to "$10,000 or twice the domestic value of the articles."

Reasons for change

In some investigations, the Commission has interpreted the current language as prohibiting it from issuing both an exclusion order and cease and desist order to remedy the same unfair act.

There are circumstances, however, where it is in the public interest to issue both an exclusion order and cease and desist order for the same unfair act. For example, a cease and desist order prohibiting a domestic respondent from selling the imported infringing product in the United States may be appropriate when the product has been stockpiled during the pendency of an investigation and an exclusion order may be appropriate to prevent future shipments of the infringing product. When the Commission determines that both remedies are necessary, it should be without legal question that the Commission has authority to order such relief. This amendment provides that authority.

Transfer From President to USTR Authority to Overrule USTR Decisions

Present law

Section 337(q) requires the Commission to transmit its determination to the President and allows the President to disapprove such determination "for policy reasons" within 60 days after receiving it.

Explanation of provision

Section 172(a)(5)(A) strikes "President" each place it appears in subsection (g) of section 337 and inserts "United States Trade Representative" in lieu thereof, thus transferring from the President to the U.S. Trade Representative the authority to overrule ITC determinations for policy reasons.

Reasons for change

This change is consistent with other sections of the bill which attempt to strengthen the role of the U.S. Trade Representative by delegating the responsibility for making decisions on trade issues which heretofore had been made by the President. The underlying purpose for such delegations is to depoliticize the decision-making process on trade issues.

Default Judgments

Present law

No provision.

Explanation of provision

Section 172(a)(5)(c) adds a new subsection to the Act which requires the Commission, in cases involving defaulting respondents, to presume the facts alleged in the complaint to be true and, upon request, to issue relief against the defaulting respondents, unless the enumerated public interest factors (the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers) preclude relief. However, a general exclusion order prohibiting the entry of unfairly traded articles regardless of their source may not be issued unless a violation of the Act has been established by substantial, reliable, and probative evidence.

Reasons for change

This amendment is motivated by the fact that discovery is usually difficult or impossible to obtain from respondents who have chosen not to participate in a section 337 investigation. For this reason, the bill authorizes the Commission to presume the facts alleged in the complaint to be true insofar as they involve a defaulting respondent, and to then issue relief limited to that respondent. The amendment will therefore not affect participating respondents. Relief in the form of a general exclusion order must be supported by a Commission finding of violations of the Act based on substantial, reliable, and probative evidence. Complainants would declare at the time the last remaining respondent is found to be in default whether they are pursuing a general exclusion order.

Abuse of Process

Present law

No provision.

Explanation of provision

Section 172(a)(5)(c) also adds a new subsection to the Act authorizing the Commission to promulgate rules prescribing sanctions for abuse of discovery and abuse of process to the extent authorized by Rules 11 and 37 of the Federal Rules of Civil Procedure.

Reasons for change

The Committee believes that Commission rules prescribing sanctions for abuse of discovery and abuse of process are needed to provide the Commission and its administrative law judges with an additional tool by which to control the discovery process.

Modification or Rescission of Exclusion Orders and Cease and Desist Orders

Present law

No provision.

Explanation of provision

Section 172(a)(6) amends the Act to require that persons who have previously been found in violation of section 337 and who have petitioned the Commission for modification or recission of a remedial order bear the burden of proof in any Commission proceeding regarding their petition. The bill also provides that the Commission may grant the petition only on the basis of new evidence or evidence that could not have been presented during the proceeding that resulted in the remedial order or on grounds which would permit relief from a judgement or order under the Federal Rules of Civil Procedure.

Reasons for change

This provision is intended to codify existing Commission practices.

Confidential Information

Present law

No provision.

Explanation of provision

Section 172(a)(8) adds a new section to the Act prohibiting the disclosure, except under protective order or to employees of the Commission or the U.S. Government, including the U.S. Customs Service, of confidential information submitted to the Commission or exchanged among the parties in connection with a section 337 investigation, without the consent of the person submitting the information.

Reasons for change

A great deal of information, disclosure of which would harm the competitive position of the submitter, is collected as part of the record in section 337 investigations. This information is disclosed, under protective order, to counsel involved in the investigation, but not to their clients or to the public. Companies have expressed concern that in the future the Commission might change its present policy regarding release, and decide to release information it no longer considers confidential, but which the submitter does consider confidential. This amendment addresses that concern by providing that disclosure may not occur without the submitter's consent.

Effective Date

The amendments made by section 172 would become effective with respect to Commission findings made on or after the date of enactment of this Act. The Commission is authorized to extend for an additional 3 months the deadline for completing any investigation due to be completed within 6 months after enactment which it declares to be complicated.

Section 173. Action Against Countries That Deny Adequate and Effective Protection of Intellectual Property Rights

Present law

No provision.

Explanation of provision

Section 173 provides a mechanism to address the adverse impact on U.S. trade caused by the lack of adequate and effective protection of U.S. intellectual property rights by other countries. Within 30 days after the annual section 181 "Foreign Trade Barriers" report is issued, the U.S. Trade Representative is required to identify "priority foreign countries." Such countries include those foreign countries and instrumentalities: (a) that have the most egregious acts, policies, or practices that deny adequate and effective protection of intellectual property rights; (b) whose acts, policies, or practices that deny adequate and effective protection of intellectual property rights have the greatest adverse impact in their own markets, or in other international markets, for the affected United States items; and (c) have not entered into good faith negotiations, or are not making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

In identifying such countries, the USTR is directed to consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate U.S. Government officers, and to take into account information submitted by interested persons or available from such sources as the annual section 181 report and section 301 petitions. The USTR may at any time revoke the identification of a priority foreign country or so identify any other country if information available indicates such action is appropriate. The USTR must publish in the Federal Register a list of priority foreign countries and any revisions to the list.

After a country is identified as a priority foreign country, the USTR must promptly initiate an investigation under section 302 of the Trade Act of 1974. The focus of the investigation is any act, policy, or practice that formed the basis for identification of that country as a priority foreign country and that is not the subject of separate investigation or action under chapter 1 of title III of the Trade Act of 1974. During investigations initiated under this section, the USTR is required to consult from time to time with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officers of the U.S. Government. The USTR may waive an investigation if he determines that initiating an investigation would be detrimental to U.S. national economic interests. If the USTR so determines, the USTR must promptly submit to the Congress a written report setting forth in detail the reasons for the determination and specifying the U.S. economic interests that would be affected adversely.

Section 173 requires that a determination and decision by the USTR under section 304(a) of the Trade Act of 1974 on what action, if any, to recommend that the President take under section 301(a)(2) of that Act be made within six months after the date of initiation of an investigation under this section. The USTR may extend the six-month period by not more than an additional six months, if he determines that: (a) complex or complicated issues are involved that require additional time; (b) the priority foreign country is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights; or (c) the priority foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights.

Reasons for change

Section 173 is intended to establish a comprehensive and effective program to address the growing problem of piracy and counterfeiting faced in foreign markets by United States firms and industries. This problem is not an isolated one affecting just one or two industries. It is a problem confronted by virtually all sectors of the U.S. economy, including manufacturers of semiconductors and other high technology products, motion pictures, computer software, books, records, auto parts, pharmaceuticals, and chemicals. It also is a problem encountered in developed and developing countries alike.

Although section 301 of the Trade Act of 1974 authorizes the President to take action on a case-by-case basis against unfair trade practices, including intellectual property rights violations, there is no provision in U.S. trade law specifically designed to deal with this problem in a comprehensive way. Moreover, existing international agreements do not provide for adequate and effective enforcement of intellectual property rights. Many of America's most competitive firms are in need of greater protection from the growing practice of piracy and counterfeiting of intellectual property overseas. This problem requires a firm response. The Committee believes that this section will provide a strong incentive for foreign countries to adopt laws governing intellectual property rights, to effectively enforce existing laws governing these rights, and to enter into international agreements for the protection of these rights.

Section 173 requires the USTR to identify priority foreign countries on the basis of information available through a variety of sources. The Committee expects that USTR will pursue the identification of priority countries in more than just token fashion, such that countries engaged in the most egregious practices, or whose practices have the greatest adverse impact on U.S. trade in the affected products, are investigated. The knowledge that the USTR will be identifying priority foreign countries each year (and, in selected instances, more often) and will self-initiate section 301 procedures against such countries, should motivate other "border-line" countries which may *not* have been formally designated to improve their protection of U.S. intellectual property in order to avoid being so designated in the future.

Section 173 authorizes the USTR to modify the annual list of priority foreign countries if available information indicates that adding or dropping a country from the list would be appropriate. Such information normally would take the form of changed circumstances in a foreign country which would warrant a change in that country's status under this section.

The USTR is required to make recommendations to the President for possible action within six months after initiation of an investigation, rather than twelve months, as provided for in most other section 302 investigations. The Committee considered a more rapid enforcement mechanism to be critical for intellectual property right violations, due to the short product life cycles of many products that are subject to intellectual property protection. Many of these products—such as "best-seller" books, recordings, and even some semiconductor chips—lose all or most of their market value in a relatively short period of time.

Section 173 authorizes the USTR to extend the initial six-month investigation period in a variety of circumstances. This authority is intended to provide limited flexibility to the USTR to pursue successful resolution of a problem. For example, if a foreign government agrees to enact new legislation to protect U.S. intellectual property rights, but the timing of domestic legislative sessions or other such limiting factors preclude final action within the initial six-month period, this provision would allow the USTR to grant additional time for final action. While the Committee does not intend this extension authority to be used as a loophole to evade the general six-month deadline, the Committee believes that it is preferable to reach an agreement which results in adequate and effective protection of U.S. intellectual property rights—even if that requires occasional extension of the six-month deadline—than to have U.S. retaliation and nothing more.

Subtitle F—Organization and Functions of Trade Agencies

Chapter 1—Office of the United States Trade Representative

Section 181. Functions

Section 181 of H.R. 3, as amended, strengthens the role of the U.S. Trade Representative, establishes an Office of Unfair Trade Practices in the Office of the USTR, and specifies the functions of the interagency trade organization.

Functions of the USTR

Present law

Section 141 of the Trade Act of 1974 establishes the Office of the U.S. Trade Representative in the Executive Office of the President (1) to be the chief U.S. representative for trade negotiations; (2) to report and be responsible to the President and the Congress on the administration of the trade agreements program; (3) to advise the President and the Congress on matters related to the trade agreements program; and (4) to chair the interagency trade organization.

Section 181 of the Trade Act requires the USTR, assisted by the section 242 interagency trade organization, to prepare an annual report on foreign trade barriers that (1) identifies and analyzes acts, policies, or practices that constitute significant barriers to, or distortions of, U.S. exports and foreign direct investment; (2) estimates the trade-distorting impact on U.S. commerce of any practice; and (3) describes any action taken or reasons for no action to eliminate any practice identified.

Explanation of provision

Section 181(a) amends section 141(c) of the Trade Act to include functions of the USTR specifically enumerated in the Reorganization Plan No. 3 of 1979. The USTR shall—

(1) have primary responsibility for developing and for coordinating implementation of U.S. international trade policy, including commodity matters and direct investment matters related to international trade policy;

(2) serve as the principal advisor to the President on international trade policy and advise the President on the impact of other U.S. Government policies on international trade;

(3) have lead responsibility for the conduct of, and be chief U.S. representative for, international trade negotiations;

(4) issue and coordinate policy guidance to departments and other agencies on basic issues of policy and interpretation arising in the exercise of international trade policy functions;

(5) act as principal spokesman of the President on international trade;

(6) report directly and be responsible to the President and the Congress on the administration of the trade agreements program;

(7) advise the President and the Congress on nontariff barriers, international commodity agreements, and other matters related to the trade agreements program;

(8) make reports to the Congress on trade negotiations and the trade agreements program;

(9) be chairman of the interagency trade organization established under section 242(a) and consult with and be advised by that organization in performing his functions; and

(10) in addition to powers and authorities currently delegated, be responsible for such other functions as the President may direct.

In addition, section 181(a) expresses the sense of the Congress that the USTR should (1) be the senior representative on any body the President may establish to provide him advice on overall economic policies in which international trade matters predominate; and (2) be included as a participant in all economic summit and other international meetings at which international trade is a major topic.

Other sections of Title I transfer authorities from the President to the USTR under sections 201-203, 301, 406, and Title V of the Trade Act of 1974 and section 337 of the Tariff Act of 1930.

Reasons for change

The basic purpose of the amendments is to reemphasize the intent of Congress, previously expressed in the Trade Act of 1974 and further clarified in Reorganization Plan No. 3 of 1979, that the USTR has the primary responsibility in the Executive branch as chief adviser to the President and to the Congress for the development, coordination, and administration of U.S. international trade policy. The Committee emphasizes that the delegation by Congress of its Constitutional power to regulate foreign commerce in many areas is meant to be exercised by the U.S. Trade Representative on behalf of the President, not by other Cabinet officers.

The authorities added by the amendment enumerated from the Reorganization Plan No. 3 of 1979 are in addition to powers currently delegated to the USTR. It is the expectation of the Committee that the USTR would carry out all responsibilities contained in Reorganization Plan No. 3 and its implementing Executive Order 12188, including having lead responsibility on trade, investment, and services policy development and negotiations in fora in addition to the GATT, such as the UNCTAD, the OECD, and the Organization of American States. The USTR is expected to designate the head of delegations and accredit their members, with necessary funding coming from the Office of International Conferences of the Department of State.

The sense of the Congress provisions reflect the Committee's very strong concern that Cabinet-level officials other than the USTR chair various interagency coordinating groups dealing with trade matters and that the USTR has often not been included in U.S. delegations to economic summit and other top-level major international meetings in which trade is a major topic. The Committee expects the USTR to participate in such meetings in the future as the President's chief trade adviser.

Office of Unfair Trade Practices

Present law

No provision. The Office of General Counsel in the USTR presently administers functions of the USTR under section 301 of the Trade Act of 1974, including coordination of interagency advice and support through a section 301 subcommittee of the interagency trade organization.

Explanation of provision

Section 181(b) amends section 141 of the Trade Act to establish an Office of Unfair Trade Practices in the Office of the USTR, assisted by an interagency advisory committee chaired by USTR and consisting of representatives from specified sections of the Departments of State, Commerce, and Agriculture. The Office would have the following functions:

(1) The coordination of the application of interagency resources to specific unfair trade practice cases.

(2) The preparation of the annual report on foreign trade barriers required by section 181 of the Trade Act.

(3) The identification, and referral to the appropriate administering authority for consideration with respect to action, each foreign act, policy, or practice in the annual report on foreign trade barriers, or otherwise known to the Office on the basis of other available information, that may be an unfair trade practice that either—

> (a) is considered to be inconsistent with provisions of trade agreements and having a significant adverse impact on U.S. commerce, or
>
> (b) has a significant adverse impact on domestic or industries that are too small or financially weak to initiate proceedings under the trade laws.

(4) The submission of an annual report with the House Committee on Ways and Means and the Senate Committee on Finance describing each referral to an administering agency and any actions taken.

(5) The identification of practices having a significant adverse impact on U.S. commerce that the attainment of a U.S. negotiating objective would eliminate.

(6) The identification, on a biennial basis of U.S. Government policies and practices that, if engaged in by a foreign government, might constitute unfair trade practices under U.S. laws.

Unfair trade practices include acts, policies or practices that may constitute subsidies or dumping under the countervailing duty and antidumping laws, may be actionable under section 337 of the Tariff Act of 1930, or may be actionable under section 301 of the Trade Act.

Reasons for change

The amendment provides a focal point in the Executive branch with visible responsibility to identify foreign trade barriers and unfair trade practices, and to identify those practices that might be most suitable for agency action. The Office would elevate the importance of unfair trade practices and coordinate interagency resources and action to deal with them most effectively. Such action could include self-initiation of an investigation, as appropriate and as agency resources permit. At the same time, the Committee does not intend that identification of particular practices in any way prejudice or imply lesser importance to consideration of petitions or possible self-initiation of investigations on other unfair trade practices. Also, trade negotiations to eliminate or discipline the practices should be pursued as a possible alternative to unilateral actions whenever feasible and appropriate.

The Committee expects the annual report on foreign trade barriers to contain a more detailed review of countries' internal programs which distort agricultural trade. The report should also include a review of the impact which Product and Consumer Subsidy Equivalents (as calculated by the Department of Agriculture Economic Research Service in its Trade Liberalization Study) have on agricultural trade.

Interagency Trade Organizations

Present law

Section 242 of the Trade Expansion Act of 1962, requires the President to establish an interagency trade organization (the existing Trade Policy Committee structure) consisting of the USTR and the heads of other agencies as the President designates. The organization may invite the participation of any agency not represented when matters of its interest are under consideration.

The purpose of the organization is to assist the President in carrying out his trade functions. The interagency trade organization makes recommendations on basic policy issues arising in the administration of the trade agreements program, makes recommendations as to any import relief action the President should take and recommends appropriate action under section 301, and performs such other functions with respect to the trade agreements program as the President designates.

Explanation of provision

Section 181(c) amends section 242(a) of the Trade Expansion Act to specify that the interagency trade organization will be composed of the USTR as chair, and the Secretaries of Commerce, State, Treasury, Agriculture, and Labor. The USTR may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. The organization shall be advisory to the USTR, as well as assist the President in carrying out his functions under the trade laws.

The organization would also perform the following functions in addition to those under present law:

(1) assist and make recommendations to the President in carrying out his functions under the trade laws, and advise the USTR in carrying out his functions;

(2) assist the President and advise the USTR on the development and implementation of U.S. international trade policy objectives; and

(3) advise the President and the USTR on the relationship between U.S. international trade policy objectives and other major policy areas which may significantly affect overall U.S. international trade policy and trade competitiveness.

The organization, in carrying out its functions, must take into account the advice of the Congressional advisers and the private sector advisory committees.

Finally, section 181(c) expresses the sense of the Congress that the section 242 organization should be the principal interagency forum within the Executive branch on international trade policy matters.

Reasons for change

The statutory intent of the Congress that the Trade Policy Committee organization established by section 242 constitute the interagency mechanism for developing a consensus on U.S. trade policy has not been fulfilled in recent years as non-statutory committees and councils have been formed and headed by Cabinet officers other than the USTR to coordinate various trade and other economic policy issues. The lead responsibility of the USTR has also been diluted as the membership of the interagency trade organization has greatly expanded through Executive orders. The proliferation of agencies involved with only a general overall interest in trade policy formulation has greatly increased the difficulty of obtaining a consensus on an overall U.S. trade policy as well as agreement on action with respect to specific issues.

The amendments to the interagency trade organization make clear that trade policy should be developed and coordinated by the USTR with only those agencies having a direct interest in the issues involved. The Committee intends that the section 242 mechanism be the principal interagency forum in the Executive branch on international trade policy matters. Section 181(c) expands the explicit statutory functions of the committee to reflect this role. The Committee also intends that the Committee be advisory to, but member views not binding on, decisions or recommendations of the USTR.

Section 182. Functions of the United States Trade Representative in Administering GSP

Present law

Title V of the Trade Act of 1974, as amended, authorizes the President to designate beneficiary developing countries and eligible articles to receive duty-free treatment under the Generalized System of Preferences (GSP). All other authorities, determinations, and functions under the GSP program, including the withdrawal, suspension, or limitation of benefits, also reside with the President.

Explanation of provision

Section 182 of H.R. 3, as amended, transfers all authorities, determinations, and other functions under the GSP program from the President to the U.S. Trade Representative.

Reasons tor change

The transfer of authority from the President to the USTR for the GSP program is consistent with the strengthening of the USTR through transfers of authority in this Act with respect to other trade statutes. The functions under the GSP program are now largely administrative, with the President performing mainly a ministerial role in acting on recommendations from the USTR developed through the interagency trade organization.

Chapter 2—United States International Trade Commission

Section 185. Annual Reports on Sectoral Competitiveness; Import Monitoring

Annual Reports on Sectoral Competitiveness

Present law

Section 332 of the Tariff Act of 1930 authorizes the ITC to investigate and report on numerous subjects concerning tariff and trade relations, including conditions, causes, and effects relating to competition of foreign industries with U.S. industries.

Explanation of provision

Section 185 of H.R. 3, as amended, adds a new section 332(h) to the Tariff Act of 1930 to require the ITC to conduct studies on an annual basis on the competitiveness of key sectors of the U.S. economy, and to submit reports on such studies to the U.S. Trade Representative and to the Congress. Such studies shall address (a) the conditions of competition within U.S. and global markets with respect to those key sectors; (b) the implications of such conditions of competition for the national economic security; and (c) the extent to which recent actions by the United States under the trade laws have affected the competitiveness of those sectors.

In determining on an annual basis which sectors should be the subject of these studies, the ITC must consult with the USTR, the Committee on Ways and Means of the House, and the Committee on Finance of the Senate. It is the intent of the Committee that the ITC be responsive to the views of these entities both in choosing which sectors should be studied and in defining the scope of the studies. Moreover, the Committee expects that, prior to any selection of sectors, the ITC also consult with private sector representatives of the sectors under consideration, to make sure that the relevant domestic industry supports such a study and considers it useful for public policy purposes.

In considering sectors to be studied, the ITC must take into account the extent to which the sector involves a critical technology, the extent to which the sector contributes to the industrial base of an economy, the extent to which it contributes to the health or conditions of other sectors, and the potential role of the sector in the global markets over the next decade.

The Committee expects the particular sectors to be different from one year to the next. It is anticipated by the Committee that the number of industry sectors to be studied in any given year would number roughly from four to six.

The reports required by this section shall present data and analysis regarding the competitiveness of the U.S. sector in domestic and foreign markets and projections concerning likely future developments in these markets. The ultimate purpose of the studies shall be to provide useful analyses to policymaking officials to assist them in anticipating sectoral trade problems and in formulating appropriate policies to address such problems in an effective manner.

In conducting its investigations under section 332, the Commission should not impose an excessive or unreasonable burden on the industry under investigation by requesting unnecessary information. To achieve this end, the Commission should make extensive use of secondary sources of data and should issue questionnaires for primary data only when similar data is otherwise unavailable and when it is essential for the completion of a technically sound analysis. For example, in doing competitive analyses, primary data should not ordinarily be solicited in situations where comparable data from foreign sources will be unavailable for purposes of comparison.

Reasons for change

The Committee is very concerned over the application of our trade laws and policies with respect to key sectors of the national economy. In an era of intense international competition and rapidly changing technologies, there is an ever-greater need for policymakers to be able to anticipate sectoral trade problems quickly and to respond quickly with effective policy decisions. The provision for sectoral competitiveness studies in section 185 of H.R. 3, as amended, represents an effort to address this need. These sectoral reports are not to be policy prescriptions themselves, but are to provide a statistical and analytical foundation for U.S. policymakers to determine appropriate policy actions.

Import Monitoring

Present law

No provision.

Explanation of provision

Section 185 directs the U.S. International Trade Commission to begin, upon the date of enactment, to monitor imports into the United States in order to identify, rank and analyze product sectors for which imports are likely to pose potential significant trade impact problems for U.S. industries. The Commission is directed to take into account such factors as changing net trade balances and evidence of increasing domestic market penetration with respect to such product sectors and to submit a quarterly report containing such analysis to the Committee on Ways and Means and the Committee on Finance.

Reason for change

The purpose of this provision is to provide the Committee with an early warning system with regard to domestic industries for which import competition is increasing. It is expected that, based on information contained in the quarterly monitoring report and consultations between the Committee and the Commission, requests may be made for a more thorough assessment, under section 332 of the Tariff Act of 1930, for certain industries that are identified as experiencing significant import penetration.

Section 186. Trade Remedy Assistance Office

Present law

Section 339 of the Tariff Act of 1930, as added by section 221 of the Trade and Tariff Act of 1984, established a Trade Remedy Assistance Office in the U.S. International Trade Commission to provide full information to the public about remedies and benefits available under the various trade laws and the procedures for obtaining them. Each administering agency must provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications to obtain these remedies and benefits.

Explanation of provision

Section 186 of H.R. 3, as amended, amends subsections (a) and (b) of section 339 to establish the Trade Remedy Assistance Office as a separate office within the Commission. The Office shall provide, to the extent feasible, assistance and advice to interested parties upon request concerning remedies and benefits available under the trade laws and the petition, application and other procedures applicable. In addition to technical assistance presently required, the Office, in coordination with administering agencies, shall provide legal assistance and advice to enable eligible small businesses to prepare and file petitions and to facilitate their obtaining remedies and benefits available under the trade laws, including any administrative reviews or appeals. However, the Office would not provide legal representation for businesses pursuing their cases. The Office would also have discretion to dismiss cases which are frivolous and could deny assistance to businesses which do not meet the qualifying criteria.

Reasons for change

The purpose of the amendment is to broaden the scope of the Trade Remedy Assistance Office within the ITC in order to improve its effectiveness in helping the private sector, as well as to ensure its independence within the ITC so as to eliminate conflicts of interest. The Office would not only provide full information to the public on available remedies under the trade laws and procedures for obtaining them, but also would provide technical and legal assistance to petitioners throughout the process of obtaining relief under any trade laws, including cases that might proceed through administrative appeals or administrative review. Such assistance would be provided as a priority to eligible small businesses but also, as appropriate, to other interested parties and petitioners who might need the assistance of the Office or find it very burdensome to seek private assistance and advice.

The purpose of the amendment is to assist primarily small businesses and businesses that are already suffering economically to such a degree that they are unable to pursue legitimate grievances and obtain remedies under the trade statutes because they lack adequate resources to bear the time and expenses involved. Committee members have received many complaints about the costs and complexities of seeking statutory relief and are aware of a number of small firms which have not even tried to seek relief because they do not know the laws and procedures, lack the necessary internal technical and legal expertise, or find the process to be too cost prohibitive.

Businesses that seek assistance and advice from the Office should not expect that such assistance will be a substitute for legal representation throughout the process or expect that such assistance will necessarily result in an affirmative outcome to their case. The Office should so advise businesses, at the same time fulfilling its responsibility to provide as much assistance as possible.

The Committee also supports establishment of a private initiative for the purpose of enhancing small business access to U.S. trade laws. Specifically, the Committee supports H.Con.Res. 76, which expresses the sense of the Congress that the corporate, legal, labor, and academic communities should pursue establishment of an independent organization to provide pro bono legal assistance to small businesses in cases involving foreign unfair trade practices. This organization should (1) develop an outreach program to inform small businesses of remedies available under U.S. trade law; and (2) provide pro bono legal assistance on a voluntary basis to those small businesses lacking adequate resources to seek remedies under U.S. unfair trade laws.

The proposal, which would entail no expenditure of Federal funds, represents a positive means to assist entrepreneurs and small businesses in dealing with the complexities of U.S. trade laws and the costs of pursuing their benefits.

Section 187. Treatment of Confidential Information

Present law

Section 332(g) currently requires that the Commission "put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command." Present law, thus, permits the President and Congress to require the Commission to transmit to the President and House Committee on Ways and Means, and/or Senate Committee on Finance information received in confidence and exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)).

Explanation of provision

Section 187 amends section 332(g) to prohibit the Commission from releasing information which it considers to be confidential business information, unless the party submitting the confidential business information had notice at the time of submission of the information that such information would be released by the Commission or the submitting party has subsequently consented to release of the information.

Reasons for change

The purpose of this technical amendment is to enable the Commission to provide adequate assurances to submitters of confidential business information as to the use to be made of such information. Under amended section 332(g), the Commission would not be required to release confidential information in its possession to the persons requesting such information under section 332(g) unless the parties submitting the information had notice at the time they submitted the information that the information would be released or the submitting party subsequently consented to release. The Committee recognizes that the Commission, in conducting its investigation under various statutory provisions, depends largely on voluntary responses to requests for information to members of industry and other interested persons in the course of its investigations. The Committee believes that it is important that the Commission be able to provide submitting parties with adequate assurances as to the use to be made of such information.

Section 188. Treatment of Commission Under Paperwork Reduction Act

Present law

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501) requires that all Federal agencies collecting information from 10 or more members of the public submit their questionnaires to OMB for approval prior to seeking the information. In the event OMB disapproves the issuance of a questionaire, the Act authorizes independent regulatory agencies to override OMB disapproval by majority vote. The Act defines the term "independent regulatory agency" to include certain enumerated agencies "and any other similar agency designated by statute as a Federal independent regulatory agency or commission." The International Trade Commission is not one of the enumerated agencies and it is unclear whether the Commission is an "independent regulatory agency or commission."

The agencies named as an "independent regulatory agency" in the statute are the Board of Governors of the Federal Reserve System, the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Consumer Products Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, and the Securities and Exchange Commission (44 U.S.C. 3502(10)).

Explanation of provision

Section 188 amends section 330 of the Tariff Act of 1930 to designate the Commission as an "independent regulatory agency" for purposes of the Paperwork Reduction Act.

Reasons for change

This amendment is intended to allow the Commission to be treated like other independent agencies in allowing the Commission the opportunity to override OMB disapproval of questionnaires by a majority vote under appropriate circumstances.

Subtitle G—Miscellaneous Trade Law Provisions

Section 191. Imports Affecting National Security

Generally

Present law

Section 232 of the Trade Expansion Act of 1962, as amended, requires the Secretary of Commerce, upon request or on his own motion, to conduct an investigation to determine the effects of imports of an article on the national security. He must report his findings and recommendations to the President within one year. If the Secretary finds "an article is being imported in such quantities or under such circumstances as to threaten to impair the national security," the President, unless he reverses the determination, must take such action for such time as he deems necessary to "adjust" the imports of the article and its derivatives so they will not threaten to impair the national security. There is no time limit for the President's decision.

Explanation of provision

Section 191(a) of H.R. 3, as amended, amends section 232(b) of the Trade Expansion Act of 1962 to require the Secretary of Commerce to report his findings and recommendations to the President within 270 days rather than one year.

Section 191(a) also imposes a time limit of 90 days after he receives the report for the President to (1) determine whether he concurs with the Secretary's advice; (2) if so, to determine the nature and duration of the action which must be taken to adjust the imports; and (3) report such determinations to the Congress. The President must implement any action within 15 days after his determination. The 90-day period applies to advice submitted by the Secretary with respect to investigations that were applied for on or after April 1, 1987, as well as to prospective cases.

Reasons for change

The basic need for the amendment arises from the lengthy period under present law—one year for investigations and no time limit for decisions by the President—before actions are required to remove a threat posed by imports of particular products to the national security. For example, in the machine tools case, the President waited over 2½ years before taking any action to assist the domestic industry. The Committee believes that if the national security is being affected or threatened, this should be determined and acted upon as quickly as possible.

Enforcement Authority for Machine Tool Imports

Present law

No provision.

Explanation of provision

Section 191(c) of the bill adds a new subsection to section 232 of the Trade Expansion Act of 1962 to provide the Secretary of Commerce with the explicit authority to enforce the quantitative limitations, restrictions and other terms of voluntary restraint agreements (VRAs) on machine tool imports negotiated pursuant to the President's decision of May 1986 with respect to machine tool imports.

A sunset provision provides for the termination of the enforcement authority to coincide with the termination of the VRAs.

Reasons for change

The purpose of section 191(c) is to provide the Administration with the authority it needs to enforce the machine tool VRAs entered into pursuant to the President's May 1986 decision. At the time the bill was approved by the Committee, there were VRAs covering machine tool imports with Japan and Taiwan. Although the President also decided in May 1986 to seek VRAs with West Germany and Switzerland, the United States has not formally entered into VRAs with them. If VRAs covering machine tool imports are entered into with West Germany and Switzerland, pursuant to the President's decision of May 1986, then the enforcement authority provided by this section would also be applicable to such agreements. While the Committee expects that foreign countries will honor the commitments they have made pursuant to the VRAs, it is the Commmittee's intent to ensure that the terms of these VRAs are followed and, if need be, enforced through the authority granted in this section.

The enforcement authority provided by this section is specifically limited to machine tool VRAs entered into by the Administration, pursuant to the President's decision of May 1986. As such, the authority granted by the section will terminate with the termination of the last machine tool VRA. This sunset provision addresses the concern of the Committee that the authority provided by this section should not be construed so broadly as to create the potential for restriction of machine tool imports after the VRAs have expired.

Section 192. Generalized System of Preferences

Treatment of Watches

Present law

Watches are one of the original items that were included in section 503(c)(1) as "import sensitive" and therefore not eligible for duty-free treatment under the Generalized System of Preferences (GSP).

Watches, as defined in headnote 2(a) to schedule 7, part 2E of the TSUS, are timepieces suitable for wearing or carrying on or about the person. While viewed primarily as functional articles, many watches are fashion items and are sometimes considered articles of jewelry.

Conventional watches use a balance wheel and hairspring as a time base, and may or may not be battery operated. Nonconventional watches use a quartz crystal as a time base and are energized by a battery or solar cells.

Solid state electronic watches are classified under TSUS item 688.36. Other watches (conventional and electromechanical) are classified under TSUS item 715.05.

Item 688.36 has a column 1 duty rate of 3.9 percent ad valorem, and column 2 rate of 35 percent ad valorem and qualifies for duty free entry under CBERA unless they contain products from column 2 countries.

Item 715.05 has a column 1 duty rate equal to the sum of the column 1 duty rates of the watch case and the movement. The column 2 rate is the sum of the applicable column 2 rates. The same CBERA criteria apply as for 688.36 items.

Watches classifiable under 715.05 produced or manufactured in an insular possession of the United States are eligible for duty-free entry if they conform to the quota and other requirements of headnote 6 to schedule 7 which details a rather complex program of preferences enacted in 1982, designed to assist the watch industry in the U.S. Virgin Islands.

Estimated shipments of watches by U.S. producers, in terms of value, decreased from $483 million in 1980 to $268 million in 1984, or by 45 percent.

Explanation of provision

Under section 192, watches would remain ineligible for GSP duty-free treatment, except those watches which, if given preferential treatment, would not cause material injury to the watch manufacturing and assembly operations in the United States and U.S. insular possessions. Because the data necessary to develop this criteria are not publicly available, the determination of which watches fit this criteria would be made by the U.S. Trade Representative after studying the matters and taking into account public views. Material injury, as used in this context, means substantial or significant injury to the watch manufacturing and assembly industry in the United States or the insular possessions.

Reasons for change

Since the late 1970's the domestic watch industry has, for the most part, moved production offshore to areas (primarily the Far East) with lower labor costs. There is some manufacturing of watches and watch movements in the U.S. insular possessions. However, the value of this production is negligible when compared with apparent consumption. Domestic watch manufacturing consists primarily of assembling components produced abroad. Procedures performed include attaching dials and hands to movement assemblies, encasing movements, regulating, packaging, and marketing.

It is because of this signficant reduction in domestic production, that it has been alleged that watches should no longer be considered to be import sensitive. The Committee continues to be concerned, however, about the impact that removal of watches from the GSP exclusion list would have on the remaining watch industry in the United States and that in the U.S. insular possessions. The Committee therefore opted for this compromise approach which would permit an exception to the exclusion of watches from GSP eligibility, if the USTR determines that such action would not cause material injury to the United States or to the U.S. insular possessions' watch industry.

Allocation of Certain Benefits

Present law

Section 504(c) of the Trade Act of 1974 authorizes the President, as of January 4, 1987, to waive the so-called "competitive need" dollar and percentage limits that apply to duty-free treatment under the Generalized System of Preferences (GSP) on individual eligible products from particular beneficiary developing countries. The President may waive these limits by an amount not to exceed 30 percent of total GSP benefits granted in the preceding year, of which not more than one-half may be waived for more advanced developing countries.

Any such waiver must be based on a determination by the President that it is in the national economic interest, with great weight given to the extent to which the country will provide equitable and reasonable market access to U.S. products and provide adequate protection and enforcement of intellectual property rights. The International Trade Commission must also provide advice on whether any U.S. industry is likely to be adversely affected by a waiver.

Explanation of provision

Section 192(b) of H.R. 3, as amended, amends the waiver authority under section 504(c) of the Trade Act to require the President to waive competitive need limits with respect to any eligible article from certain debtor nations if such countries meet the qualifying conditions set forth in the amendment. To be eligible, a country must qualify for a waiver under the existing statutory waiver criteria, have difficulty servicing the debt it owes to foreign or multilateral sources, and have not less than 20 percent of its debt owed to foreign or multilateral sources held by a combination of U.S. banks, the International Monetary Fund, and the World Bank. In deciding which of these countries, if any, and which eligible articles to include in a waiver allocation, the President must give great weight to (1) the amount of debt of each country relative to its gross national product, (2) the share of its export savings that each country would be required to devote to servicing its existing debt, (3) the trade surplus of each country with the United States relative to its outstanding debt, and (4) the extent each country is undertaking good faith efforts to meet its debt obligations. The President may withhold waiver allocations to any debtor nation based on these considerations.

The aggregate value of waivers available for such nations would be determined by the total amount of new competitive need exclusions in the preceding year for all GSP beneficiary countries. This amount would be allocated among qualifying debtor countries, if any, on the basis of the criteria set forth in the amendment. The waiver amounts would count against and be included in the total available waiver trade "pool" under present law. The present requirement for ITC advice on whether a domestic industry is likely to be adversely affected by a waiver of the competitive need ceilings on a particular product would also apply.

Reasons for change

The purpose of the amendment is to provide authority to grant through GSP a greater opportunity for nations with large debt burdens to reduce those debt levels through expanded export trade, if they otherwise qualify for such waiver benefits. The criteria for selecting any qualified countries and for allocating waiver amounts among such countries are designed to ensure that additional GSP benefits would be allocated only to countries whose debt burden is held by U.S. banks and international organizations, not by foreign banks, and which are undertaking good faith efforts to meet their debt obligations. Countries which do not meet the existing waiver authority criteria, particularly the provision of equitable and reasonable market access for U.S. exports and initellectual property right protection, would not be eligible for consideration. Thus, the provision can be used as further leverage to achieve other GSP objectives. The total level of annual GSP duty-free treatment would not increase beyond existing authorized levels since any waivers granted under the amendment would be allocated from the existing waiver trade "pool."

Section 193. Treatment of Eligible Articles Under the Caribbean Basin Economic Recovery Act

Present law

Section 212(e) of the Caribbean Basin Economic Recovery Act (the Caribbean Basin Initiative (CBI)) requires the President to withdraw or suspend the designation of any country as a CBI beneficiary if he determines that, as a result of changed circumstances, the country does not meet the criteria under section 212 for designation.

Explanation of provision

Section 193 of H.R. 3, as amended, amends section 212(e) of the CBI to authorize the President to withdraw, suspend, or limit duty-free treatment with respect to any article from any country, as an alternative to withdrawing or suspending their designation as a beneficiary country, if changed circumstances would bar designation.

Reasons for change

The amendment will provide more flexible authority to fashion an appropriate response to the particular circumstances, without necessarily forcing either removal of all trade benefits from the country or nonaction in the case of noncompliance with designation criteria. The amendment is also consistent with authority under present law to withdraw, suspend, or limit duty-free treatment under the Generalized System of Preferences on any eligible article from a country or to remove their beneficiary status entirely as a sanction for noncompliance with conditions of designation.

Section 194. International Coffee Agreement

This section amends section 2 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356k) by striking out "October 1, 1986" and inserting "October 1, 1989", thereby extending U.S. participation in the International Coffee Agreement (ICA), effective January 1, 1987.

The purpose of this provision is to provide for continued U.S. participation in the International Coffee Agreement. Continued U.S. participation in the agreement would provide the United States with the opportunity to influence future marketing and production policies of coffee producing countries when consumers are most vulnerable. A halt in U.S. participation at this time would send a negative signal to producing countries and could trigger actions, such as efforts to form cartels, which would adversely affect the U.S. coffee industry and U.S. consumers.

The International Coffee Agreement is a multilateral agreement that presently involves 71 coffee producing and consuming countries representing an estimated 98 percent of world coffee production and an estimated 85 percent of world coffee consumption. The present agreement, which entered into force on October 1, 1983, and remains in force through September 30, 1989, is the latest in a series of agreements that date back to 1962. The United States has been a participant in such agreements since 1962.

The objective of the agreement is to stabilize the price of coffee by means of a system of country export quotas which are decreased when prices are declining and increased when prices are rising. In periods of high prices, quotas are suspended altogether in order to encourage maximum exports. The quota system is enforced by the importing members. The agreement is administered by the International Coffee Council (ICC).

Section 2 of the International Coffee Agreement Act of 1980, initially codified at 19 U.S.C. 1356k, provided authority for U.S. implementation of its treaty obligations under the 1976 agreement. The act was amended in 1983 to reference the 1983 agreement and authorize U.S. participation for an additional 3 years, until October 1, 1986. Among other things, the act provides that the President shall seek to protect U.S. consumers against unwarranted price increases as a result of actions by the ICA or market manipulation by two or more members of the ICA and requires reports on the operation of the ICA and trade in coffee. This provision would authorize U.S. participation until October 1, 1989.

Domestic production of green coffee is limited to Hawaii and Puerto Rico. In crop years 1981-85, annual domestic production averaged about 32 million pounds. During the same period, an annual average of 2.3 billion pounds of green coffee was imported for roasting.

Total U.S. exports of all coffee (green-weight equivalent) amounted to 40 million pounds in 1985, or less than 1 percent of apparent domestic consumption.

During 1981-85, U.S. apparent consumption of all coffee was relatively stable at 2.4 billion pounds.

Section 195. Steel Imports

Present law

Under the Steel Import Stabilization Act (title VIII of the Trade and Tariff Act of 1984), the President is authorized to enforce quantitative restrictions on steel imports, as provided in bilateral arrangements with steel-exporting countries. At the present time, the United States has bilateral arrangements with 18 countries plus the European Community. These agreements generally provide for the enforcement of quantitative restrictions by means of export visas issued by the foreign government.

Explanation of provision

Section 195 of H.R. 3, as amended, adds a new subsection to section 805 of the Steel Import Stabilization Act to provide explicit authority to enforce quantitative restrictions and other terms with respect to steel imports when a steel product is exported from an arrangement country and transshipped or transformed in a nonarrangement country prior to entry in the United States. Under this authority, any steel product that is manufactured in a country that is not party to a bilateral arrangement (a "nonarrangement country") from steel which was melted and poured in a country that is party to a bilateral arrangement (an "arrangement country"), may be treated for purposes of the quantitative restrictions and other terms under that arrangement as if it were a product of the arrangement country.

For example, if a steel product, such as steel pipe, is imported from a country with which the United States has no steel restraint agreement ("country X"), and this steel pipe was manufactured in country X from steel sheet that was melted and poured in country A (a country with which the United States does have a steel restraint agreement), then the steel pipe from country X may be treated (for purposes of quota and export license/visa/certificate restrictions) as if it were steel pipe from country A. Therefore, if the bilateral arrangement between the United States and country A sets a quantitative restriction on country A's steel pipe exports, and requires such exports to be accompanied by a valid export license, visa, or certificate, then the Commerce Department may direct the U.S. Customs Service to require the steel pipe from country X to meet such requirements.

The steel pipe from country X may be treated as steel sheet from country A, if valid documentation is provided regarding the nature and amount of the steel sheet which was incorporated into the steel pipe.

Application of this authority with respect to imports from any particular country or company will be determined by the Secretary of Commerce, after consultation with the U.S. Trade Representative. Under the President's steel program, primary responsibility for administration of and compliance with the various steel agreements has been delegated to the Department of Commerce. The provisions of section 195 are not intended to disrupt the existing

Presidential delegations of authority with respect to the steel program. It is the Committee's understanding that the U.S. Trade Representative has primary responsibility for policy and negotiations with respect to the steel program. Before taking action with respect to the enforcement authority under this section, Commerce must, therefore, consult with the U.S. Trade Representative.

Although the authority provided under section 195 is discretionary, the Committee expects this authority to be used vigorously to prevent or respond to attempts to circumvent restraints negotiated under the President's steel program. Furthermore, the Committee also intends for this authority to be used to enforce restrictions on steel exports from countries with whom the United States has negotiated a bilateral steel arrangement and whose steel trade is now embargoed or prohibited, where circumvention is evident.

The purpose of this provision is to prevent circumvention. Therefore, the Committee would expect the Secretary of Commerce to use the authority when there is substantial evidence or reason to believe that certain imports or certain parties are involved in circumvention. In determining whether circumvention is occurring, the Secretary should pay particular attention to marked increases in trade since October 1, 1984, when the President's steel program went into effect.

Reasons for change

Since the enactment of the Steel Import Stabilization Act and implementation of the President's steel program of negotiated restraint agreements, numerous concerns have been brought to the attention of the Congress regarding transshipment and circumvention schemes through third country markets.

Since 1984, despite significant declines in steel consumption in the United States and declines in the shipments of U.S. producers, imports from non-arrangement countries have increased dramatically, rising to 5,166,000 tons in 1986 from 4,594,000 tons in 1984. In 1984 imports from non-arrangement countries accounted for only 17.5 percent of the imports, compared to 25 percent in 1986.

The Committee believes that the shipment of steel from arrangement countries to non-arrangement countries for further processing has contributed to the increased imports and import penetration from non-arrangement countries. In certain instances, foreign steel producers have used mills they own in non-arrangement countries to further process steel and circumvent the arrangements. In other instances, it has come to the attention of the Committee that international trading companies have purchased steel from arrangement countries, had it transferred to a non-arrangement country and then marketed the finished products in the United States.

Section 195 of this bill clarifies the intent of the Committee, when it passed the Steel Import Stabilization Act, that adequate and full enforcement of the President's program of negotiated restraints is necessary to eliminate the adverse effects of unfair trade in steel imports. It is the view of the Committee that circumvention of quantitative restrictions negotiated in bilateral restraint agreements impairs the effectiveness of the President's program, and therefore should be dealt with where justified on the facts, by vigorous application of the authority provided in this section.

Section 196. Coal Exports to Japan

Present law

No provision.

Explanation of provision

Section 196 adds a new provision expressing the sense of the Congress that the objectives of the November 1983 Joint Policy Statement on Energy Cooperation as it relates to U.S. exports of coal to Japan, including metallurgical coal, have not been achieved. It urges the President to direct the U.S. Trade Representative to negotiate an agreement with Japan under which Japan will import U.S. metallurgical coal on a market share basis equivalent to Japan's market share of steel products imported by the United States. It states that the President should encourage increased purchases by Japan of U.S. steam coal. Finally, the President is urged to report to the Congress on the success or failure of any negotiations by November 1, 1988.

Reasons for change

The Joint Policy Statement on Energy Cooperation, issued by President Reagan and Prime Minister Nakasone on November 11, 1983, dealt with various aspects of U.S.-Japan energy trade and cooperation. With respect to metallurgical coal, the Joint Statement noted:

> that the depressed state of world steel manufacturing had reduced demand for traded coal. However, in view of the fact that the U.S. has been a major supplier to the Japanese market, both sides will endeavor to maintain the level of Japanese imports of U.S. coal. Japan expects that imports of competitively priced U.S. metallurgical coal will not continue to decline, and will encourage its steel industry to increase U.S. coal imports when the conditions in the industry permit.

Japan is the largest single steel exporter to the United States (not counting the European Community as a bloc), accounting for about 21 percent of U.S. steel imports in 1986. In 1983, when the Joint Statement was issued, the United States accounted for 25 percent of Japan's imports of metallurgical coal, according to Japanese customs data. By 1986, however, the U.S. share had declined to 17 percent, reflecting a decline in U.S. coal exports in both volume and value terms. While contract prices of U.S. metallurgical coal were on average $5 to $7 per ton above world spot prices during much of 1983 and 1984, in 1985 and 1986 that price differential was virtually eliminated. Despite that narrowing of price differentials, Japanese purchases of U.S. metallurgical coal have continued to fall and are expected to continue falling in 1987. In adopting the language in section 196, the Committee is expressing its desire to see the President address the decline in U.S. metallurgical coal exports to Japan through negotiations which will give added meaning and strength to the objectives of the 1983 Joint Policy Statement.

With respect to steam coal, the 1983 Joint Policy Statement stated in part that:

> Japan will encourage its industries to consider [the] purchase of more competitively priced U.S. steam coal to meet future demand not already covered by existing contracts.

Despite this statement, the U.S. share of Japan's steam coal imports remains below three percent. The Committee urges the President to encourage increased purchases by Japan of U.S. steam coal.

Section 197. U.S. Flag Ships for Automobile Carriage

Present law

No provision.

Explanation of provision

Section 197 sets forth a number of Congressional findings relating to the marine transportation of automobiles to the United States. It notes that millions of foreign-produced automobiles are imported into the United States each year, contributing to the U.S. trade deficit. It notes further that unfair, restrictive, or discriminatory practices of exporting countries engaged in the marine transportation of automobiles to the United States have precluded vessels which are owned, operated, and manned by U.S. citizens from participating in such transportation, to the further detriment of the U.S. balance of trade in goods and services. Finally, section 197 notes that U.S. flag vessels are competitive with foreign flag vessels, and when foreign unfair, restrictive, or discriminatory practices are removed or suspended, agreements can be negotiated with foreign automobile producers for the transportation of their products to the United States in U.S. flag vessels.

Section 197 requires the President to take appropriate and feasible steps within his power, including the full exercise of all U.S. rights under international treaties, to negotiate trade agreements with each foreign country from which 50,000 or more automobiles are imported into the United States each year, that will eliminate unfair, restrictive, or discriminatory practices in the maritime transportation of automobiles. The President also is required to report to the Congress semiannually on the progress of such negotiations.

Reasons for change

In 1986, nearly 2.3 million automobiles were imported into the United States from Japan. An estimated 44 percent of those imports were transported on Japanese flag vessels, and another 47 percent on Liberian, Panamanian, and Singaporean registered vessels. Many of the latter vessels were owned or controlled by Japanese companies. One Japanese shipping company alone reportedly had 40 car carriers dedicated exclusively to U.S.-Japan auto trade, while not a single U.S. flag car carrier was operating in this area. Other nations, including Korea, Germany, and others, also transported hundreds of thousands of cars to the United States each year under arrangements which did not include U.S. flag participation.

The Committee is concerned over the fact that no U.S. flag vessels currently are used by foreign automobile producers to ship their products to the United States. Automobiles account for a very large portion of the U.S. merchandise trade deficit. That deficit could be offset partially through increased services earnings by U.S. flag carriers transporting those automobiles to this country. In addition, the absence of U.S. flag carriers in U.S. international automobile trade deprives U.S. seamen of job opportunities for which they should have occasion to compete. It is for this reason that the Committee urges the President to negotiate the elimination of unfair, restrictive, or discriminatory practices in the maritime transportation of automobiles.

Section 198. Resolution on Japanese Purchases of U.S. Auto Parts

Present law

No provision.

Explanation of provision

Section 198 makes a number of findings with respect to trade in automobiles and automotive parts between the United States and Japan. The large U.S. trade deficit with Japan is accounted for largely by imports of such products. Despite the fact that U.S. automotive parts producers meet increasingly rigorous requirements for quality, just-in-time supply, and competitive pricing in the U.S. market, U.S. exports of parts to Japan were below $300 million in 1986. Section 198 expresses Congress' strong support of market-oriented sector specific (MOSS) talks on auto parts aimed at significantly expanding U.S. opportunities for sales of original equipment and replacement parts to Japanese auto manufacturers. It further notes that success of the MOSS talks will be measured by a significant increase in such sales and by initiation of long-term sourcing relationships between U.S. parts producers and Japanese automakers. Finally, section 198 directs the U.S. Trade Representative and the Department of Commerce to report to the Congress at the conclusion of the MOSS talks on the outcome of the talks and on any agreements reached with Japan with respect to Japanese firms' purchases of U.S. auto parts.

Reasons for change

Members of the Committee on Ways and Means, in numerous meetings with Japanese government and business leaders, have repeatedly stressed the importance of increased purchases by Japanese firms of competitive U.S. products of all kinds, including auto parts. Other Members of Congress have worked hard in recent years to bring about increased access for U.S. firms to the Japanese automotive parts market specifically. Those efforts do not seem to be having sufficient effect on the purchasing decisions of Japanese automobile producers. Despite the fact that Japanese firms exported 2.3 million automobiles to the United States in 1986, U.S. exports to Japan of automotive parts have stagnated at a level under $300 million. Of equal concern is the fact that despite a growing level of auto production in the United States by Japanese firms, reportedly only 20-30 percent of the material content of such autos is purchased from American suppliers. Moreover, a growing number of Japanese auto parts producers are establishing production facilities in the United States in order to serve both Japanese and American auto producers, a fact which could exacerbate existing trends.

The Committee has no desire to see the exclusionary business practices of Japanese auto manufacturers transplanted to the American market. The United States is Japan's best customer, not only for automobiles, but for a wide range of other products. The clear success of Japanese auto firms in penetrating the U.S. market makes it particularly objectionable that these same firms would so strenuously resist the purchase of competitive U.S. auto parts. This resolution is intended to reiterate the concern of the Committee and of many Members of Congress over the lack of progress on this issue. The Committee strongly supports the negotiating approach to U.S. trade problems and for that reason looks to the MOSS talks as an appropriate means for resolving U.S. concerns in the area of auto parts trade. Establishment of an effective mechanism for monitoring purchasing transactions between U.S. auto parts companies and Japanese auto manufacturers is an essential component of any resolution of this problem. The Committee will follow closely the progress—or any lack thereof—in this area.

TITLE II—INTERNATIONAL TRADE IN TELECOMMUNICATIONS PRODUCTS AND SERVICES

Present law

There is no law currently in force dealing specifically with international trade in telecommunications products and services. Section 301 of the Trade Act of 1974 may be used to address certain unfair foreign trade practices affecting telecommunications trade. However, Title 2 provides authority to deal in a comprehensive way with international trade barriers faced by the U.S. telecommunications industry.

Explanation of provision

Title II, The Telecommunications Trade Act of 1986, contains the following provisions.

Section 201. Short Title

Section 201 provides that this Act may be cited as the "Telecommunications Trade Act of 1986."

Section 202. Findings and Purposes

Section 202 sets forth six Congressional findings that rapid growth in the world market for telecommunications products and services will continue for several decades; the United States can improve prospects for its exports and technological leadership through a program to achieve an open world market; most foreign markets have extensive government intervention which adversely affects U.S. exports, investment, and employment; the open U.S.

market has resulted in a dramatic growth in imports and a growing imbalance in competitive opportunities; and unless the imbalance is corrected by achieving fully competitive market opportunities for U.S. telecommunications products and services in foreign markets, the United States should avoid granting continued access to foreign products and services in telecommunications and other areas.

Section 202 also sets forth three purposes of the Act: (1) to foster the economic and technological growth of and employment in the U.S. telecommunications industry and all U.S. persons who benefit from a high quality telecommunications network; (2) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and (3) to achieve a more open world trading system for telecommunications products and services through negotiation and achievement of fully competitive market opportunities for U.S. telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade.

Section 203. Negotiating Objectives

Section 203 sets forth six primary negotiating objectives and seven secondary negotiating objectives for the purpose of section 204, which requires the USTR to establish specific negotiating objectives on a country-by-country basis.

Section 203(a) sets forth six primary negotiating objectives, which are:

> (1) The nondiscriminatory procurement of telecommunications products and related services by foreign entities that provide local exchange telecommunications services that are owned, regulated, or controlled by foreign governments.
>
> (2) Assurances that any requirement for the registration of telecommunications products which are to be located on customer premises, for the purposes of—
>
> > (A) attachment to a telecommuncations network in a foreign country, and
> >
> > (B) the marketing of the products in a foreign country,
>
> be limited to the certification by the manufacturer that the products meet standards established by the foreign country for preventing harm to the network or network personnel.
>
> (3) Transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products.
>
> (4) The ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approval.
>
> (5) Access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including non-discriminatory prices) for the provision of value-added services by United States suppliers.
>
> (6) Monitoring and effective dispute settlement provisions regarding matters referred to in paragraphs (1) through (5).

Section 203(b) sets forth seven secondary negotiating objectives, which are:

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, dumping, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services; and

(7) monitoring and dispute settlement mechanisms to facilitate compliance with telecommunications trade agreements.

Section 204. Investigations of Foreign Telecommunications Trade Barriers

Investigations. Section 204(a)(1)(A) requires the USTR, within six months of the date of enactment, to undertake and complete an investigation of foreign countries with a substantial potential market for U.S. telecommunications products and services. The purpose of the investigation is to identify and analyze those acts, policies, and practices in each country which deny fully competitive foreign market opportunities to the telecommunications products and services of U.S. firms.

Under section 204(a)(2), the USTR may exclude any foreign country from the required investigations, if the USTR determines that the potential market in that country for U.S. telecommunications products and services is not substantial. However, countries excluded from investigation for this reason must be reviewed annually by the USTR as provided by section 204(c). If the USTR considers that country's potential market to be substantial, he must undertake and complete, within 6 months, an investigation to identify and analyze those acts, policies, and practices which deny fully competitive foreign market opportunities for U.S. firms.

Investigations by petition from interested parties or by self-initiation also may be undertaken by the USTR under section 204(b). Such investigations must be completed within 6 months of the date on which they were commenced, in the case of investigations by self-initiation; or within 6 months of the date on which a petition is filed.

The USTR is required under section 204(d) to report to the House Committee on Ways and Means and the Senate Committee on Finance on the investigations undertaken under this section. Each report must be submitted within 30 days of the completion of the investigation.

Trade Negotiating Objectives. Section 204(a)(1)(B) requires the USTR to establish specific primary and secondary negotiating objectives, drawing from the list of such objectives set forth in section 203, which should be pursued in negotiations to obtain fully competitive market opportunities in foreign countries for telecommunications products and services of U.S. firms. The USTR shall establish these negotiating objectives on the basis of the analysis described above. The USTR also shall take into consideration: the needs of the affected U.S. industry in that country; the competitiveness of U.S. industries in domestic and world markets; the progress being made to expand market opportunities under existing agreements or ongoing negotiations; and the availability of appropriate incentives and effective remedies.

Section 205. Action by the President in Response to Investigations by Trade Representative

Section 205(a) requires the President, upon completion of the USTR's investigations under sections 204(a)(1)(A) [mandated by the bill] or 204(b) [by petition or self-initiation] to enter into negotiations with countries which were identified during the investigation as denying fully competitive market opportunities. The purpose of the negotiations is to enter into bilateral or multilateral agreements which achieve the specific primary and secondary negotiating objectives that were established by the USTR under section 204(a)(1)(B).

The negotiating period set forth in section 205(c) provides 18 months from the date of enactment for the President to enter into agreements with countries identified by the USTR during his investigation. The President may request up to two one-year extensions of the negotiating period. To do so, he must submit a bill 90 days prior to the expiration of the negotiating period and a statement that: substantial progress is being made in negotiations with the country concerned; and further negotiations are necessary to reach an agreement which meets the specific primary and secondary negotiating objectives established with respect to that country. Such requests will be considered by Congress under the "fast-track" procedures of sections 102 and 151 of the Trade Act of 1974.

If the President is unable to enter into a trade agreement with a foreign country within 18 months after the date of enactment (or longer, as approved by Congress), section 205(b)(1)(A) provides that the President *shall* take whatever actions authorized by the bill that are necessary and appropriate to achieve the purposes of the *primary* objectives not covered by the agreement. Section 205(b)(1)(B) provides that the President *may* take whatever actions authorized by the bill that are necessary to achieve the *secondary* objectives not covered by the agreement.

Section 205(b)(2) requires that any actions taken by the President against the goods or services of a foreign country be directed first at telecommunications products and services from that country.

Section 205(b)(3) authorizes the President to terminate, withdraw, or suspend trade agreements; take any action under section 301 of the Trade Act of 1974; prohibit the Federal Government from purchasing telecommunications products of a specified country; increase domestic preferences or suspend waivers of domestic preferences with respect to Federal government telecommunications purchases (or other products in the case of suspension of waivers); deny Federal funds or credits for purchases of telecommunications products of a specified foreign country; and suspend GSP benefits on articles from specified foreign countries.

With respect to the authority to terminate, withdraw, or suspend trade agreements, the President is authorized under section 205(b)(4) to increase the rate of duty on products of the country concerned up to the rates set forth in column 2 of the Tariff Schedules of the United States (TSUS). Those rates are to apply to products imported immediately after the termination, withdrawal, or suspension of an agreement takes effect.

In order to ensure the sanctity of contracts, section 205(b)(5) specifies that actions taken by the President under section 125(b)(3) will not affect any binding obligations entered into before the date of enactment of this bill to which any U.S. citizen or national is a party. Section 205(b)(6) provides that any action taken by the President under section 205(b)(3) is subject to approval by Congress under "fast-track" procedures.

Section 205(d) provides that the President may modify or terminate any action taken against a country only if that country enters into a trade agreement which achieves the objectives established by the USTR for that country. The President shall inform the House Committee on Ways and Means and the Senate Committee on Finance promptly of any such modification or termination.

Section 206. Review of Trade Agreement Implementation by Trade Representative

Section 206(a) defines "trade agreement" as (1) a trade agreement entered into under section 205 that is in force with respect to the United States, and (2) a trade agreement regarding telecommunications products or services that was in force with respect to the United States on the date of enactment of this Act.

Section 206(b) requires the USTR to conduct annual reviews to determine whether any act, policy, or practice of a country with which a telecommunications trade agreement has been reached: (a) is not in compliance with the terms of the agreement; or (b) otherwise denies fully competitive market opportunities within the context of the terms of the agreement. In his review, the USTR is directed under section 206(c)(1) to:

> consider any evidence of actual patterns of trade (including United States exports of telecommunications products to a foreign country and sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services.

The USTR is required under section 206(c)(2) to consult with the International Trade Commission with regard to "actual patterns of trade."

If the USTR determines that a country's acts, policies, or practices violate a telecommunications trade agreement or otherwise deny fully competitive market opportunities under the agreement, section 206(d) requires him to take whatever authorized actions that are necessary to: (a) fully offset the foreign act, policy, or practice, and (b) restore the balance of concessions between the United States and the foreign country in telecommunications trade. The USTR may not take action against a country with a trade agreement in existence on the date of enactment before the President has taken action against any other country under section 205(b)(3).

Section 206(e) authorizes the USTR to terminate, withdraw, or suspend trade agreements or take any action under section 301 of the Trade Act of 1974. Actions must be directed first at telecommunications products and services. If all feasible actions have been taken against telecommunications products and services, and if the applicable objectives established with respect to that country have not been achieved, then, and only then, may actions be directed against other products and services.

Section 206(e)(4) provides that any actions taken by the USTR are subject to "fast-track" Congressional consideration. Section 206(f) specifies that actions taken by the USTR will not affect binding obligations entered into before the date of enactment of this bill to which any U.S. citizen or national is a party. Section 206(g) provides that the USTR may modify or terminate any action taken under this section only if he determines that the foreign country concerned has taken appropriate remedial action regarding the act, policy, or practice concerned. The USTR is required under section 206(h) to promptly inform the House Committee on Ways and Means and the Senate Committee on Finance of any such modification or termination.

Section 207. Consultations

Section 207 requires that the President and the USTR consult with the Secretary of Commerce and other members of the Trade Policy Committee established under section 242(a) of the Trade Expansion Act of 1962; with the private sector advisory committees established under section 135 of the Trade Act of 1974; and with other interested parties in the course of investigations, in the establishment of negotiating objectives, and in determining appropriate action. In addition, this section requires the President to consult closely with appropriate committees of Congress on all aspects of the negotiations.

Section 208. General Trade Agreement Authority

Section 208 provides general trade agreement authority allowing the President to conclude telecommunications trade agreements under section 205(a). Section 208(a) authorizes the President, during the 42-month period following the date of enactment, to enter into trade agreements to achieve the primary and secondary objectives established by the USTR. Section 208(b) provides that agreements involving U.S. concessions are to be treated as trade agreements subject to "fast-track" legislative procedures. The President is authorized to implement through proclamation any trade agreement that provides solely for unilateral concessions by a foreign country to the United States. Under section 208(c), the President is authorized to extend agreement benefits and obligations to all countries or just to countries which are parties to the agreement. In addition, the President may choose whether or not to apply the agreement benefits and obligations uniformly to all parties.

Section 209. Compensation Authority

Section 209(a) authorizes the President to enter into agreements granting new U.S. concessions as compensation to a foreign country for action taken against it, if that action is found to violate U.S. international obligations, including obligations under the General Agreement on Tariffs and Trade (GATT). Section 209(b) provides that agreements reached under this section are subject to Congressional approval under "fast-track" procedures.

Section 210. Definition of Telecommunications Product

Section 210 defines "telecommunications product" in terms of classification numbers from the Tariff Schedules of the United States (TSUS).

Section 211. International Obligations

This section provides that nothing in the Act shall be construed to require the President and the Congress to violate U.S. legal obligations, including GATT obligations.

Reasons for change

Findings and Purposes

The findings and purposes (section 202) reflect the Committee's concern over the tremendous imbalance in market access for telecommunications goods and services that exists between the United States and other countries. The increased deregulation of the U.S. market since the 1960s and before, capped by the court-ordered divestiture by American Telephone and Telegraph (AT&T) of its local operating companies on January 1, 1984, has resulted in a U.S. market virtually devoid of barriers to the entry of foreign competitors. This market openness is not viewed by the Committee as a negative feature of the U.S. market. The Committee has no intention of suggesting that a more protected market should be reintroduced in the United States. Rather, it is the view of the Committee that vigorous efforts should be made by the United States to achieve more open markets in other countries. Such efforts should be undertaken with a sense of urgency and should not await the conclusion of any multilateral trade negotiations, which traditionally proceed at a relatively slow pace. The problems confronting the U.S. telecommunications industry, coupled with the importance of that industry to the United States economy, warrant more immediate attention.

The U.S. telecommunications industry is the largest in the world, accounting for nearly half of worldwide sales in 1986. The U.S. and world markets for telecommunications products and services have grown at very healthy rates in recent years and are projected to continue doing so in the coming years. Deregulation and technological advances are significant spurs to rapid growth in the industry.

The U.S. telecommunications industry retains a strong technological lead over industries in other countries in most areas of the higher technology spectrum. U.S. competitiveness in such low-technology items as handsets has seen steady erosion due to a variety of factors, however, and imports of such products have enjoyed strong growth. At the same time, due to pervasive barriers in major foreign markets, U.S. producers have not been able to expand their exports as much as would have been the case in the absence of those barriers. Thus, despite a strong technological lead in many product areas, the U.S. industry has seen a once-healthy trade surplus shift to a sizable deficit in a few short years and its share of the U.S. market decline gradually. The U.S. balance of trade in telecommunications equipment shifted from a surplus of about $800 million in 1981 to a deficit of $1.9 billion in 1986.

While the strong dollar has been a major factor in the overall loss of U.S. competitiveness in international trade, the problems confronting the U.S. telecommunications industry appear to go beyond that of dollar strength alone. Despite the competitive disadvantage of a strong dollar, U.S. producers have succeeded in increasing their exports steadily, if slowly, in recent years. U.S. exports of telecommunications equipment in 1981 were $1.9 billion; in 1986 they were nearly $2.7 billion. U.S. producers have continued competing successfully against their strongest competitors from Europe, Canada, and Japan in third country markets—particularly developing countries—even in the face of the strong dollar. The erosion in the U.S. trade balance in telecommunications equipment has stemmed from the sharp growth in imports—from $1.1 billion in 1981 to $4.6 billion in 1986.

In the area of telecommunications services, United States firms are among the world leaders in terms of competitive potential. However, in services trade as in product trade, foreign country restrictions on access to the basic telecommunications network, on the international flow of data, and other barriers severely hamper the ability of U.S. firms to compete internationally. The rapid pace of change with respect to telecommunications technology and regulation, both here and abroad, means that our trade policies in this area require continual assessment. For example, until recently virtually all international satellite services had been transmitted via an international cooperative; the U.S. Government has now authorized private U.S. companies to provide a limited range of these services. International satellite services and transponders have not ever before been offered by private companies, however, and these companies are encountering stiff foreign government resistance and dumping-like behavior in their efforts to export overseas. Under the Telecommunications Trade Act, international satellites (including transponders) and services delivered via those satellites are encompassed within the term "telecommunications products and services" and are entitled to fair and nondiscriminatory treatment by foreign governments and associated entities, including domestic and international telecommunications organizations and service providers. With the world market in telecommunications services approaching an estimated $300 billion, removal of foreign barriers to trade is imperative.

The telecommunications industry, taken by itself, is of major importance to the maintenance of a vibrant, technologically advanced economy. From telephone switching apparatus and cellular telephones to optical fibers and communications satellites, the heart of a modern economy is bound closely to the telecommunications industry. When viewed more broadly, the central role of the telecommunications industry becomes even more apparent. Advancements in such industries as banking, data processing, tourism and travel, and a host of other industries would not be possible without ready access to a low-cost, highly efficient telecommunications network.

Yet the U.S. lead in telecommunications technology should not be taken for granted. Continued loss of market share in the United States, coupled with the inability of most U.S. firms to penetrate markets in Europe, Canada, and, until recently, Japan, carry the risk of steady erosion of that lead. For these reasons, the Committee believes that action is needed to address the problem of closed telecommunications markets in most of the world's advanced industrial countries. Such action should be taken at the earliest possible date. The open U.S. market would serve as the greatest possible leverage in negotiations to open foreign markets. The Telecommunications Trade Act provides for judicious use of that leverage.

The findings and purposes section refers to the need to achieve fully competitive market opportunities for U.S. exporters and their subsidiaries. By referring both to exporters and subsidiaries, the Committee's intention is to clarify that a major purpose—and indeed, a major measure of success—of agreements negotiated under the Act is to eliminate barriers to U.S. exports. At the same time, the Committee recognizes that one element of foreign market openness is the related sales and services provided by U.S. subsidiaries, and any assessment of foreign market openness should take such activities into account.

The term "fully competitive market opportunities" reflects the overriding purpose of the Act, which is to open foreign markets so that U.S. firms have the opportunity to compete fully and fairly with domestic firms in those markets. Such foreign market openness will provide increased opportunities for U.S. exports and for export-related employment in the telecommunications industry.

The Committee has no intention of suggesting that the standard of "fully competitive market opportunities" means that foreign telecommunications markets must be a mirror image of the U.S. market. This issue has been the source of intense controversy in discussions about the bill, and the Committee wishes to put such fears to rest. The bill contains no stated or implied requirement for the denationalization of telecommunications monopolies or for the elimination of vertical integration in foreign telecommunications markets. In the area of standards, while an overall standard of "harm to the network" may be adopted by a foreign country, the Committee does not expect all of that country's telecommunications standards (such as those relating to maintenance of the network, signal strength, etc.) to conform to those that exist in the United States. The same is true for other objectives set forth in the bill.

However, deregulation and divestiture of the telecommunications market in the United States have provided substantial benefits to foreign producers of telecommunications equipment. The Committee believes that U.S. producers should enjoy access to foreign markets which is comparable to foreign access in the U.S. market. The areas where such access is regarded as particularly important are spelled out in the bill's primary objectives—nondiscriminatory procurement, open and transparent standards-setting processes, nondiscriminatory access to the basic telecommunications network, and so on. In sum, achievement of the specific negotiating objectives established for a foreign country should have the effect of correcting the imbalance in competitive opportunities between the United States and that country in the area of telecommunications trade.

Investigations

The purpose of the investigations required of the USTR under section 204 is to identify and analyze those acts, policies, and practices in each country which deny fully competitive foreign market opportunities to the telecommunications products and services of U.S. firms. It is the Committee's intention that the USTR identify and analyze a list of priority problems in each country which have the overall effect of denying fully competitive foreign market opportunities. The language in this section should not be construed as requiring the USTR to develop a comprehensive "laundry list" of problems in each country, including items of low priority or with very limited impact on foreign market access. The list developed here should provide the basis for establishing a priority list of negotiating objectives under this section.

As to investigations by petition or by self-initiation, it is the Committee's intention that such investigations apply only to those acts, policies, or practices which deny fully competitive market access, as is required for investigations mandated by the Act. The USTR should not undertake an investigation on the basis of frivolous or unimportant assertions by a petitioner which allege or identify acts, policies, or practices with a very limited impact on foreign market access.

Trade Negotiating Objectives

Section 204 also requires the USTR to establish specific negotiating objectives with respect to foreign countries, drawing from the primary and secondary negotiating objectives set forth in section 203. The six primary negotiating objectives are immediate objectives which should be sought in each bilateral negotiation. The objectives should be formulated on the basis of the USTR's judgment, in close consultation with the affected industry, of the situation in that country and the needs of U.S. industry—i.e., which barriers are the most significant impediments to obtaining fully competitive market access—and how much negotiating leverage the USTR feels is available to aid in achieving those objectives. Such leverage could take the form of U.S. countermeasures or incentives in the form of additional U.S. concessions. It is the view of the Committee that few, if any, additional trade concessions should be made to other countries as part of agreements reached through negotiations. The U.S. market for telecommunications equipment and services is virtually completely open to foreign competition. Continued access to the U.S. market should serve as sufficient incentive to foreign countries to open their telecommunications markets to U.S. firms.

The seven secondary negotiating objectives also represent important goals for negotiation. However, unlike the primary objectives, the secondary objectives represent those longer-term goals which are envisioned for international trade in telecommunications in order to bring such trade more fully into the GATT system. They are appropriate goals to be sought either bilaterally or multilaterally as, for example, in the Uruguay Round of trade negotiations. As a result, while the Committee encourages the USTR to seek to obtain these objectives in negotiations with other countries, failure to achieve these secondary objectives does not require the same degree of response by the President under section 203, as does failure to achieve the primary objectives.

In establishing the specific primary and secondary negotiating objectives for each country, the USTR is required to consult with the private sector and any interested parties. The USTR also should keep the House Committee on Ways and Means and the Senate Committee on Finance informed of developments in this area. However, it is not the intent of this Act that the USTR should make its list of negotiating objectives available beyond the private sector advisory committees established under section 135 of the Trade Act of 1974; the Trade Policy Committee established under section 242(a) of the Trade Expansion Act of 1962; the Congressional committees; or other interested parties, such that the foreign country concerned is aware in advance of the U.S. "bottom-line" negotiating objectives with respect to that country. To do so would minimize the possibility of obtaining additional concessions from that country.

Due to the importance placed in the Act on the specific negotiating objectives, a fuller explanation of the Committee's intent in this area is warranted.

Taken as a whole, the primary negotiating objectives set forth in section 203 represent those minimum market conditions which should exist in a foreign country in order to give U.S. firms the opportunity to compete fully and fairly against domestic firms in that market. The primary negotiating objectives include the following items, as indicated in the explanation section above.

(1) The nondiscriminatory procurement of telecommunications products and related services by foreign entities that provide local exchange telecommunications services that are owned, regulated, or controlled by foreign governments.

This objective is intended to clarify the coverage of this Act to include not only such state-owned telecommunications monopolies as exist in France and a number of other European countries, but also such entities as Nippon Telephone and Telegraph (NTT) in Japan, British Telecom (BT) in the United Kingdom, and Bell Canada. These governments maintain de facto control over, or direction of, the policies and practices of these telecommunications providers; and, in the case of Japan and the United Kingdom, currently hold large percentages of those firms' outstanding stock.

This objective is not intended to cover truly private foreign firms which have entered their domestic markets in competition with such government-controlled entities as those listed above by way of example. This objective also is not intended to require the divestiture of state-owned monopolies or state-controlled entities such as those cited above. Rather, it is the desire of the Committee to see that U.S. firms have an opportunity to supply equipment and such ancillary services as maintenance and repair on an equal footing with domestic producers of telecommunications equipment in foreign markets.

(2) Assurances that any requirement for the registration of telecommunications products which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommuncations network in a foreign country, and

(B) the marketing of the products in a foreign country,

be limited to the certification by the manufacturer that the products meet standards established by the foreign country for preventing harm to the network or network personnel.

The purpose of this objective is to promote the common standard of "harm to the network" in assessing a product's acceptability for attachment to local telecommunications networks in foreign countries. The purpose also is to indicate that U.S. firms should be permitted to freely market customer premises equipment, if that equipment meets the requisite standards and is registered with the proper agency or authority in a foreign country. Many foreign countries impose needlessly complex standards, and impose restrictions on the marketing of certain equipment even if properly registered, which have the effect—intentional or not—of discouraging competition from foreign suppliers. West Germany, for example, considers the first telephone or modem purchased by the customer to be a part of the telecommunications network and not customer premises equipment. Private firms, therefore, cannot offer these "first-purchase" items for sale.

The Committee also believes that allowing manufacturers to "self-certify" that their equipment meets the requisite standards in each foreign market—as is the case in the United States with respect to telecommunications equipment, automobiles, and other products—would greatly facilitate international trade in telecommunications products.

(3) Transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products.

(4) The ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approval.

The Committee believes that these two objectives are important elements of a truly open market. The process of setting standards should be open to foreign, as well as domestic, firms, to ensure that standards are not crafted as an impediment to import competition. Foreign firms also should have ready access to the standards which apply to products and services to be sold in the local market. The ability to have telecommunications equipment approved and registered by type, as is done in the United States, would be a vast improvement over the practice followed in many countries, whereby each piece of equipment sometimes must be approved and registered on an individual, piece-by-piece basis. Such procedures not only are cumbersome but act as a nontariff barrier as well.

The Committee also encourages, where appropriate, efforts by U.S. negotiators to seek the mutual recognition of type approval among parties to a telecommunications trade agreement which provides for type approval of equipment. Mutual recognition of type approval would be of particular significance in the case of a U.S. agreement with a bloc of countries, such as the European Community (EC). Mutual recognition would allow a manufacturer obtaining type approval in one country to have that type approval accepted in another country. The concept does not require that participating countries' telecommunications networks have identical physical characteristics, although it would require harmonization of those countries' standards relating to "harm to the network". Because this one element of the bill's primary objectives is encouraged by the Committee, but is not required by the bill, failure to pursue or achieve mutual recognition of type approval would not be cause for mandatory countermeasures by the President.

(5) Access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including non-discriminatory prices) for the provision of value-added services by United States suppliers.

Value-added service is an area of very strong U.S. competitiveness and promises to be an area of very rapid world growth in the future. This objective is intended to assure that U.S. providers of value-added services (such as data processing, bank check-clearance, consumer credit-check services, etc.) can gain access to foreign countries' basic telecommunications networks on terms, conditions, and prices which are comparable to those enjoyed by domestic service providers.

(6) Monitorinig and effective dispute settlement provisions regarding matters referred to in paragraphs (1) through (5).

This objective is regarded by the Committee as essential in assuring that any problems or disputes which may arise in the areas outlined above can be detected and resolved in a timely fashion.

Action by the President

Section 205 requires the President to negotiate with countries identified by the USTR during his investigation, with the aim of entering into agreements which achieve the specific primary and secondary negotiating objectives established by the USTR.

The provision authorizing a one-year period of initial negotiations following the six-month investigation period, and two possible extensions of one year each in these negotiations, enables the Congress to maintain strong oversight over the negotiations but avoids the inflexibility of a fixed deadline for either reaching agreement or imposing trade remedies. However, if Congress does not approve a request for an extended negotiating period (or if the maximum allowable 42-month period authorized for negotiations is close to expiration), and a satisfactory agreement has not been reached, then appropriate remedies would have to be put into effect against the country concerned at the end of the negotiating period. Since both the request for an extension of the negotiating period and any trade remedies which the President intends to impose require approval of Congress under "fast-track" procedures, the President would have to submit a package of possible trade actions at the same time that he submits the request for extension of the negotiating period.

The overall purpose of the primary objectives is to achieve fully competitive market opportunities for U.S. firms in foreign markets. A determination as to whether or not fully competitive market opportunities have been achieved in an agreement, and thus whether action is necessary, will be a judgment made by the President in close consultation with parties specified in section 207 of the bill—the Trade Policy Committee established under section 242(a) of the Trade Expansion Act of 1962; and any interested parties from the private sector, including appropriate committees established under section 135 of the Trade Act of 1974. These private sector advisory committees include representatives of industry and labor.

It is not the Committee's intention that each primary objective must be met in full in order for a judgment to be made that an agreement achieves fully competitive market opportunities in a foreign country. Rather, it is the Committee's intention that the agreement, taken as a whole, is sufficient to achieve that objective. The consultation process between the President and those firms that are seeking access to the foreign market in question, coupled with the requirement that the Congress approve any agreement requiring U.S. concessions, should serve as an adequate safeguard against the possibility that the administration would accept under this standard a patently inadequate agreement.

The reason for giving the President discretion as to whether or not to take action when the agreement does not achieve the secondary negotiating objectives is two-fold. First, because the secondary objectives constitute goals of a longer-term, more multilateral nature than do the primary objectives, it is felt that the President should not have to take action against a country if those objectives are not met in a bilateral context. Moreover, some of the acts, policies, and practices referred to in the list of secondary objectives—such as subsidization, dumping, or the violation of intellectual property rights—can be remedied by other U.S. trade laws. Second, the Committee wants to avoid creating a disincentive to the USTR's selecting more negotiating objectives than those set forth in the list of primary objectives. This might be the case if the President were *required* to take action in the event that the secondary objectives were not met.

In determining what actions to take against a country, the President should take into account the nature and extent of the market to which fully competitive access is being denied; the ability of U.S. firms to supply that market; and the potential effectiveness of measures available to correct the imbalance in competitive opportunities. If the segment of the foreign market for which fully competitive market opportunities have not been achieved is a segment in which U.S. firms are not as competitive as firms in third countries; or if the President lacks any viable means of inducing the foreign country to open that market segment; then it would not necessarily be desirable to take action against the country concerned, or to offer additional U.S. concessions, when the benefits of market opening might flow to firms in other countries.

Section 205 of the Act requires that any actions taken by the President against the goods or services of a foreign country be directed first at telecommunications products and services from that country. Only then may the President take action directed at other products and services. The purpose for this requirement is to exert the maximum possible pressure against foreign suppliers of telecommunications products and services who are the chief beneficiaries of the open U.S. market and the protected home market.

The President is authorized to select from a broad range of measures in order to increase his ability to tailor any actions to the telecommunications trade situation characterizing each country. The President may use the flexibility provided by the options to impose those measures that will have the most profound effect on the foreign country concerned, to moderate the cost of compensation, or to avoid or lessen the impact on domestic users of imports from that country. In his consultations with interested parties from the private sector, including representatives of industry and labor, the President should, among other things, consider any information received as to the effects of proposed actions on U.S. firms and workers engaged in the distribution, marketing, and use of the affected products. Such flexibility is intended to avoid creating, through trade actions, marketplace conditions under which domestic firms could become captives of one or a very limited number of suppliers of telecommunications products or services. It also is intended to avoid cutting off foreign sources of supply for domestic firms which may be largely or wholly dependent on such sources for the effective conduct of their business. Factors which may be taken into account by the President in determining the items for action include the availability from domestic or other foreign sources of a comparable product or service (including price; delivery time; and quality or design appropriate for the purpose intended); the existence of conditions of short supply; the impact on access by U.S. firms to new technology; and the likelihood that domestic firms will be reliant on just one or a very limited number of suppliers of a product or service, such that market power could become heavily concentrated in those suppliers. Based on such information, and to the extent consistent with the objectives of the bill, the President should attempt to minimize any adverse effects of U.S. actions on such parties and may be selective as to the products covered by any actions. Such consideration is important in order to avoid causing harm to U.S. interests which may be greater than the benefits to be obtained by selecting a particular product for action. This flexibility does not, however, alter the requirement that the President's actions be of sufficient magnitude to achieve the purposes of the primary and, as appropriate, the secondary objectives established with respect to that country.

USTR Review of Trade Agreement Implementation

Section 206(a) defines "trade agreement" as (1) a trade agreement entered into under section 205 that is in force with respect to the United States, and (2) a trade agreement regarding telecommunications products or services that was in force with respect to the United States on the date of enactment of this Act. The only country that currently falls into the second category is Japan. It is the intent of this section that the USTR's review and enforcement authorities apply not only to agreements involving U.S. concessions and approval by the Congress, but also to agreements which involve only unilateral concessions on the part of a foreign country.

The overall purpose of section 206 is to establish a mechanism to enforce trade agreements involving telecommunications products and services. In monitoring foreign countries' compliance with agreements, the USTR is required to consider not only compliance with the letter of the agreements but also of the spirit, which is to open foreign markets and expand the opportunities for world trade. It is for this reason that the USTR is directed to consider the "actual patterns of trade" which emerge between the United States and a foreign country following conclusion of an agreement, taking into account the international competitive position and export potential of the relevant U.S. products and services. This provision is intended to discourage foreign countries from frustrating the overall objective of fully competitive market opportunities through measures or actions which do not necessarily violate the terms of the agreement as written but which do not permit U.S. firms to enjoy the rewards of a truly open market.

The term "services" as used in the phrase "sales and services related to those products" exported from the United States (as used in section 206(c)—"Review Factors") is intended to cover not only installation, maintenance, and other ancillary services but also such services as value-added networks, which are a large and growing business for U.S. firms. The term "sales" as used in the phrase is intended to cover sales of products exported from the United States and any local modification, adaptation, and other manufacturing which is done to render a piece of equipment complete for use by the customer in a foreign country. The term "sales" is not intended to include equipment manufactured by a U.S. subsidiary in a third country and sold in the foreign country of immediate concern.

As noted above, in assessing a foreign country's compliance with an agreement, the review factors direct the USTR to consider "patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services". The role of U.S. subsidiaries in this assessment warrants further clarification. A country would not be considered as meeting the objectives of a telecommunications agreement simply by allowing U.S. subsidiaries to manufacture locally while at the same time maintaining barriers to competitive U.S. exports. However, if a product produced in the United States would not be competitive if exported to a foreign country, but that same product produced locally by a U.S. subsidiary in that country is competitive, the absence of U.S. exports of that product should not by itself be taken as an indication of a closed market. For example, the high cost of shipping entire reels of fiber optic cable in many cases renders the landed cost of such cable too high to compete effectively with cable produced locally in a foreign market. If a U.S. subsidiary is producing and competing successfully in a foreign market, and there are no significant barriers to U.S. exports, the USTR would not be required to declare that the foreign country is denying U.S. firms fully competitive market opportunities. Similarly, if a particular U.S. export is competitive, yet U.S. firms simply choose not to export to a foreign country for purely commercial reasons, and if there are no significant barriers to exports, the foreign country in question would not be an appropriate object of U.S. countermeasures.

Judgments as to the factors underlying the patterns of trade which flow from an agreement will have to be made on a country-by-country basis, relying heavily on consultations with private industry, the International Trade Commission, and other interested parties.

It is the intent of this section that the USTR attempt to tailor any actions to the telecommunications trade situation characterizing each country, for the reasons outlined with respect to actions taken by the President. Similarly, the USTR should, among other things, attempt to minimize any adverse effects of his actions on U.S. firms and workers engaged in the distribution, marketing, and use of the affected products, as provided for with respect to the President's actions. The considerations provided for with respect to action by the President apply to actions taken by the USTR. However, action by the USTR nonetheless must be sufficient to fully offset the act, policy, or practice in question and restore the balance of concessions in telecommunications trade between the United States and the country concerned.

Nothing in this Act should be construed to permit actions by the President or the USTR to be directed against U.S.-based subsidiaries of foreign firms. However, this prohibition does not affect the authority of the President or the USTR to take action against goods or services imported by those subsidiaries.

Trade Agreement Authority

Section 208 provides the general trade agreement authority which is necessary to allow the President to conclude telecommunications trade agreements under section 205(a). It is not to be read as providing separate telecommunications negotiating authority which is free of the requirements of other provisions of the Act. The trade agreement authority provided for in section 208 is subject to all the conditions and limitations set forth in section 205(c), relating to the negotiating period available for reaching telecommunications trade agreements.

Compensation Authority

Section 209(a) provides that the President may grant compensation to foreign countries for actions taken by the President or the USTR, subject to the condition of section 209(a)(3) that "such action is found to be inconsistent with the international obligations of the United States, including the obligations under the General Agreement on Tariffs and Trade." Section 209(a)(3) is addressed primarily at those cases in which U.S. action is taken to restore the balance of concessions in the face of a telecommunications trade agreement violation by a foreign country. Unless the U.S. action is found to be a violation of U.S. GATT obligations, it would not seem desirable or appropriate to compensate that foreign country for such action.

It is not the intent of this section to require that the President await a decision by the GATT or a GATT panel in all cases before determining whether or not compensation should be awarded to a foreign country. Adequate GATT case law now exists to provide guidance in many cases as to whether or not a U.S. action violates U.S. GATT obligations. In such cases, as soon as U.S. action is taken, the President may submit to the Congress a bill containing the proposed U.S. concessions to be offered as compensation.

In cases for which GATT rules are unclear or for which no GATT case law exists and there is genuine uncertainty as to whether or not U.S. actions violate U.S. GATT obligations, the President should allow the foreign country concerned to pursue its rights under the GATT and should avoid granting new U.S. concessions until a GATT ruling has been made.

TITLE VIII—TARIFF AND CUSTOMS PROVISIONS

Title VIII entitled Tariff and Customs Provisions provides for a number of revisions to the Tariff Schedules of the United States (TSUS). These provisions include continuation of existing duty suspensions, reduction and suspension of duty on items not produced in the United States, reclassifications, and other minor customs and tariff matters.

Subtitle A—Permanent Changes in Tariff Treatment

Section 800. Reference

Section 801 applies to all other sections of Subtitles A, B, and D of Title VIII. It states that whenever an amendment or repeal is expressed in terms of an amendment to, or repeal of, a schedule, item, headnote or other provision, the reference shall be considered to be made to a schedule, item, headnote, or other provision of the Tariff Schedules of the United States (19 U.S.C. 1202).

Section 801. Casein

This provision would change the present tariff classification of imported casein. Imported casein is currently classified in schedule 4 of the Tariff Schedules of the United States (TSUS), covering chemicals and related products, in item 493.12. This provision would appropriately classify casein as a dairy product under a provision in schedule 1, which covers agricultural products, but retain the current column 1 and column 2 duty rates of "free." The provision would also reclassify certain dried milk from item 493.14 to new item 118.55. The existing rates of duty of 1.3 cents per pound in column 1 and 5.5 cents per pound in column 2 would not change.

Items 493.12 through 493.17 and the suspension heading thereto would be deleted.

Casein, the principal protein fraction of milk, is manufactured by a precipitation process similar to that used in making cheese. Casein is produced in two major grades—food quality and industrial grade. The difference is primarily the absence of pathogenic organisms in the milk used, the level of sanitation standards maintained in the processing plant, and the amount of heat used in sterilizing the casein product. Industrial grade casein, made under lower sanitary standards, is less expensive than food grade; it may originate in countries where rinderpest, hoof-and-mouth disease, brucellosis, and/or tuberculosis are uncontrolled. The presence of these diseases in uncontrolled form in any country disqualifies its dairy products from food or feed uses in the United States.

Casein is utilized in two main areas—food, feed, and pharmaceutical uses (approximately 80 percent) and industrial applications (approximately 20 percent). In food, casein is an ingredient in synthetic cheese (primarily in frozen pizzas for home consumption), coffee whiteners, frozen desserts and whipped toppings, bakery products, and diet foods. The principal feed use is in calf-weaning supplements. Casein is also used in special infant formulas for lactose-intolerant children, as well as in some other medical, nutritional, and pharmaceutical applications. While insignificant in terms of the quantity used therein, the casein used in these products is critical to the health of persons requiring them and no known practical substitute for casein exists. Industrial uses are in glues, paper and textile coatings, and binders. Industrial usage of casein is declining as other products provide superior price or performance characteristics, while the quantity used in artificial cheese has grown rapidly.

U.S. dairy farmers, seeking additional markets for milk, have long focused on imported casein. Proposals to limit or impose a duty on casein have been introduced in every recent session of Congress.

Pursuant to request, the Commission conducted an investigation (No. 22-44) of the effect of casein imports on the domestic dairy price support program. It reported to the President on January 29, 1982, (USITC Publications 1217) that imports of casein do not have a deleterious effect on the operation of the dairy price support program.

Casein is currently provided for *eo nomine* in TSUS item 493.12, under the superior heading "Casein and mixtures in chief value thereof." Imported casein enters the United States free of duty from all countries; accordingly, preferential tariff programs are inapplicable.

There is no known domestic commercial production of casein.

Importers include subsidiaries and affiliates of the Irish and New Zealand Dairy Boards (the principal exporters to the United States), U.S. dairy processing companies, and major industrial users of casein, as well as distributors.

There were no exports of casein from the United States in 1984.

This legislation would have no effect on revenue.

Section 802. Salted and Dried Plums

Section 802 creates a new tariff classification for plums, soaked in brine and dried with a column 1 and column 2 rate of 2 cents per pound. These plums are currently classified with other prepared or preserved plums, prunes and prunelles with a column 1 rate of 17.5 percent ad valorem and a column 2 rate of 35 percent ad valorem.

Plums are the fruit of a perennial, flowering tree grown in temperate climates throughout the world; in the United States, more than 2,000 varieties of plums, consisting of about a dozen species, have been grown. Most of the important varieties grown commercially are of 2 species; European plums, best suited for drying, and Japanese plums, marketed chiefly as fresh fruit.

Canned plums are generally used as a appetizer, a side dish or a dessert fruit, while frozen plums are used in the manufacture of preserves and baked goods. Plums and prunes in brine are primarily oriental specialty foods.

The proposal is intended to grant a lower duty rate to plums which are first heavily salted by soaking in brine, then dried, and which have a limited market as an oriental delicacy. Because they were first salted, these plums are not classified as "dried" by the Customs Service; however, the rate of duty on dried plums is appropriately applied to this product because it is in essence dried, rather than canned or frozen.

Imported prepared or preserved plums, prunes and prunelles (including plums soaked in brine and then dried) are currently classified in TSUS item 149.28 with a column 1 rate of duty of 17.5 percent ad valorem and a column 2 rate of 35 percent ad valorem. Imported plums are not eligible for GSP but are eligible for CBERA.

According to industry sources, there is no known domestic production of plums that are soaked in brine and dried. Total U.S. production of prepared or preserved (that is, canned and frozen) plums and prunes declined irregularly from an estimated 53.7 million pounds in 1980 to 38.2 million pounds in 1984.

Plums and prunes are produced commercially in nearly every state, with 91 percent of the crop harvested in California in recent years. According to the *Census of Agriculture*, plums and prunes were produced on 140,000 acres on 11,200 farms in 1982, compared with 136,000 acres on 13,100 farms in 1978. In 1982, 3,700 farms in California accounted for 122,400 acres of production. Most of the producers raise other crops in addition to plums.

During 1980–84, total U.S. imports of otherwise prepared or preserved plums rose irregularly from 1.8 million pounds, valued at $2.5 million, in 1980 to 2.5 million pounds, valued at $3.2 million, in 1984. Data are not separately reported for the plums covered by the proposed legislation; however, such imports are believed to be very small. Hong Kong was the leading source of imported prepared or preserved plums in 1984; Taiwan and China were also sources of supply.

U.S. exports of prepared or preserved plums are not separately reported; however, such exports in recent years are believed to be negligible or nil.

During 1980–1984, apparent U.S. consumption of prepared or preserved plums declined irregularly, averaging 41.8 million pounds annually; in 1984, consumption amounted to 40.7 million pounds. The ratio of imports to consumption averaged 5 percent annually throughout the period.

Enactment of this legislation would likely have little effect on revenue as imports of plums soaked in brine and then dried are believed to have been minimal.

Section 803. Grapefruit

Section 803 would add two new items to the TSUS to provide tariff treatment for imports of grapefruit juice comparable to that provided for orange juice in legislation that became effective January 1, 1985.

Currently, not concentrated grapefruit juice is dutiable at a column 1 duty rate of 20 cents per gallon, and concentrated grapefruit juice is dutiable at a column 1 rate of 35 cents per gallon. The rate for not concentrated juice applies to both natural (fresh) juice and to juice produced from concentrated juice (reconstituted). The effect of this legislation would be to make the rate of duty applicable to not concentrated grapefruit juice (20 cents per gallon) apply only to *natural* unconcentrated grapefruit juice and *not* to *reconstituted* grapefruit juice. Currently, foreign grapefruit juice concentrate can be exported to a third country, reconstituted, and then entered into the United States as a not concentrated citrus juice at the lower rate of duty.

The grapefruit juice covered by this provision may not be mixed with other fruit juices, but may be sweetened or unsweetened, not concentrated (single-strength) or concentrated, and may not contain over 1 percent of ethyl alcohol by volume. If concentrated, the juice may be in liquid, powdered, or solid form.

The purpose of the provision is to close a perceived loophole in the TSUS that could allow highly concentrated grapefruit juice to be brought into foreign trade zones for processing and then entry into U.S. customs territory at a duty rate of 20 cents per gallon, rather than the 35 cents that is applicable to imported concentrates. The sale of this reconstituted product entered at the lower rate of duty would have a severe price depressing effect on U.S. production. A similar "loophole" has already been closed for orange juice, but unless it is also closed with respect to grapefruit juice, there may be a shift in production to the latter product.

Grapefruit juice which is not mixed, not concentrated, and does not contain over 1.0 percent of ethyl alcohol by volume, is classified for tariff purposes under TSUS item 165.32. The column 1 rate of duty is 20 cents per gallon (10.4 percent ad valorem equivalent in 1984), and the column 2 rate is 70 cents per gallon. Included under this item are juices which are reconstituted from concentrate.

Grapefruit juice which is concentrated is classified under TSUS item 165.36. The column 1 rate of duty applicable to this item is 35 cents per gallon (27.7 percent ad valorem equivalent in 1984) and the column 2 rate is 70 cents per gallon.

Items 165.32 and 165.36 are not eligible for duty-free treatment under the GSP and no LDDC rate applies. Imports are eligible for CBERA.

Under the recently negotiated free-trade agreement with Israel items 165.32 and 165.36 were designated sensitive articles and excluded from the benefits of duty-free treatment for a period of 5 years.

U.S. processing firms that produce grapefruit juice generally also process orange juice, but in significantly larger quantitites than the production of grapefruit juice. Nationally, an estimated 40 firms process grapefruit juice from fresh fruit and nearly seven-eighths of them are located in Florida.

U.S. production of grapefruit juice (on a single-strength equivalent basis) averaged 170 million gallons annually during 1980–82, and declined to an annual average of 110 million gallons during 1983–84. Florida supplied about 80 percent of the domestic production over the 5-year period. While much of Florida's production of concentrated grapefruit juice is later reconstituted to produce single-strength juice before sale to the ultimate consumer, the share of Florida's total production that is initially concentrated increased from 54 percent in 1980 to 79 percent in 1984. Thus, the quantity of single-strength grapefruit juice produced directly from fresh grapefruit in Florida has declined dramatically from 66 million gallons in 1980 to 20 million gallons in 1984.

Separate statistics for U.S. imports of grapefruit juice are not available. U.S. imports of not concentrated grapefruit juice are estimated to have been less than 1 million gallons annually during 1980–84. In 1984, when not concentrated orange juice was excluded from the basket class for the first time, U.S. imports of other not concentrated citrus fruit juices (predominately grapefruit juice) totaled 1.1 million gallons and 84 percent of the imports were from Canada.

In 1984 U.S. imports of other concentrated citrus fruit juices (predominately grapefruit juice) totaled 3 million single-strength equivalent gallons, valued at $3.5 million. The primary suppliers in 1984 were Brazil (39 percent), Belize (34 percent), and Mexico (19 percent). The imports from Belize in 1984 entered free of duty under the CBI. No imports were from that source during 1980–83.

During 1980–84 U.S. exports of grapefruit juice, both not concentrated and concentrated (measured on a single-strength basis), were equivalent to 12 percent of domestic production. Exports declined irregularly from 18.3 million gallons in 1980 to 15.5 million gallons in 1984, which is a smaller percentage decline (15 percent) than the decline in production (39 percent). Japan, Canada, and West Germany were the principal export markets for grapefruit juice in 1984.

During 1980–84, the apparent U.S. consumption of grapefruit juice declined irregularly from 163 million gallons in 1980 to 97 million gallons in 1984. The ratio of imports of "other citrus juice" to consumption of grapefruit juice did not exceed 6 percent during 1980–84, and was generally in the range of 1 percent to 3 percent.

The potential annual gain in customs revenues resulting from enactment of this provision would be about $165,000, based on dutiable imports in 1984. This estimate is based on the assumptions that all imported not concentrated other citrus fruit juice in 1984 was made from reconstituted grapefruit juice concentrates, and that all imported concentrated citrus fruit juice other than lime or orange entered in 1984 was concentrated grapefruit juice.

Section 804. Hatters' Fur

Section 804 would provide permanent duty-free treatment for hatters' fur now classified in TSUS item 186.20 while removing carroted furskins from the scope of that item. A new item 186.22 would be added to cover carroted furskins which would be dutiable at a column 1 rate of 15% ad valorem and a column 2 rate of 35% ad valorem. Duty-free treatment would be made effective for items retroactive to December 31, 1985 upon proper request filed with Customs.

Hatters' fur is the principal raw material used in the production of fur felt hats. Hatters' fur is cut from the skins of certain animals (chiefly rabbits and hares) after the skins have undergone carroting, a chemical process to improve the felting properties of the fur. Most of the hatters' fur produced in the United States is cut from raw skins which are imported free of duty and then carroted in the United States before the removal of the fur for use as hatters' fur.

These changes are intended to correct an anomaly in the tariff rates of duty whereby imported finished products (fur felt hats) and semifinished products (hat bodies, known in the trade as hoods) are dutiable at a lower rate than the raw material (hatters' fur) used to make the finished and semifinished product.

Imports of hatters' fur under TSUS item 186.20 are dutiable at a column 1 rate of 15 percent ad valorem and a column 2 rate of 35 percent ad valorem. The column 1 rate is suspended through December 31, 1985. Imports are eligible for duty-free entry under GSP and CBERA.

Imports of the raw material from which almost all hatters' fur is made (raw or not dressed rabbit furskins) are free of duty from both column 1 and column 2 countries.

The bulk of the imports of the finished products (fur felt hats) and semifinished products (hoods) which are made from hatters' fur are dutiable at a column 1 rate of $1.51 per dozen plus 2.2 percent ad valorem, and a column 2 rate of $16 per dozen plus 25 percent ad valorem. The ad valorem equivalent was 5 percent for column 1 imports in 1984.

Detailed statistics concerning U.S. production of hatters' fur are not available. Industry sources estimate that U.S. production amounts to less than one million pounds annually. Production, which began declining after World War II, dropped steeply in the 1960's. In recent years, however, the industry has revived somewhat with the increased demand for Western-style hats. Industry sources indicate that the domestic industry has considerable unused and underutilized capacity.

The hatters' fur and fur felt hat industries are characterized by high degrees of concentration and integration. Five firms are believed to account for nearly all of the domestically produced hoods and fur felt hats. These firms, however, have subsidiaries and plants located throughout the United States, with much of the hatters' fur reported to be produced around Newark, New Jersey. Excluding Stratton Hats, Inc., which imports hatters' fur for production of hoods and hats, these firms are believed to account for the great bulk of U.S. production of hatters' fur. Although the firms occasionally sell hatters' fur or hat bodies to each other, most of the production of hatters' fur and hoods is captive production for producing their own fur felt hats.

The five firms together account for almost all U.S. imports of hatters' fur, and for some U.S. imports of fur felt hats.

During 1980–84, U.S. imports of hatters' fur generally declined, ranging from a high of 195,000 pounds, valued at $2.6 million, in 1981 to 26,000 pounds, valued at $226,000, in 1984. France was the principal source for U.S. imports during 1980–84, supplying 62 percent of the quantity and 69 percent of the value of imports in 1984. The remainder of U.S. imports of hatters fur in 1984 was supplied by Belgium and the Federal Republic of Germany. Imports from column 2 sources were nil in 1984.

Based on import statistics and industry estimates of production, apparent U.S. consumption of hatters' fur amounted to about one million pounds annually in recent years.

It is estimated that the annual loss of customs revenue resulting from enactment of the legislation would approximate $34,000.

Section 805. Tariff Treatment of Certain Types of Plywood

Section 805 would revise headnote 1 to part 3 schedule 2 of the Tariff Schedules of the United States (TSUS) to ensure that imports of tongued, grooved, lapped, or otherwise edgeworked plywood, wood-veneer panels, and cellular panels would be classified under the tariff provisions for those products rather than as building boards.

The products included in this legislation, plywood, wood-veneer panels, cellular panels, and building boards, are described in the headnotes to part 3 of schedule 2 of the TSUS. Whether or not they have been edge worked, these products are used for many purposes, including siding, flooring, wall paneling, and roofing. Cellular panels are generally not edge worked.

Plywood sheets are being exported by Canada to the United States as building boards rather than as plywood. This subjects them to a much lower duty rate. By simply altering the edge of a plywood sheet, the merchandise qualifies for classification as building boards under the theory that the edgework dedicates the sheet to some special use. Actually the sheets are used no differently than are plywood sheets with plain edges. This legislation would revise the tariff schedules to insure that only special-use plywood is classified under the building board category.

Currently, Customs classifies plywood and wood veneer panels which have been edgeworked as building boards with an ad valorem equivalent of 10 percent and a column 2 rate of 15 cents per pound plus 25 percent ad valorem. Imports are eligible for GSP and CBERA.

A petition was filed by the domestic industry under section 516 of the Tariff Act of 1930 contesting the classification of edgeworked plywood as building boards. Customs affirmed their classification and the petitioner filed a summons in the Court of International Trade.

Domestic production of plywood, wood-veneer panels, cellular panels, and building boards amounted to about 20.4 billion square feet, valued at about $4.0 billion in 1982. In 1984 production rose to about 30.3 billion square feet, valued at about $5.45 billion.

It is estimated that in 1984 about 400 companies, employing 68,500 people, produced plywood, wood-veneer panels, cellular panels, and building boards. Of these companies, approximately 18 (41 plants), employing 2,000 people, produced softwood plywood siding, which is the major product which would be affected by enactment of the legislation.

U.S. imports of plywood, wood-veneer panels, cellular panels, and building boards are estimated to have fallen from $620 million in 1979 to $400 million in 1982 as construction activities fell. Imports then rose to $580 million in 1983 and $700 million in 1984 as such activities rebounded.

U.S. exports of plywood, wood-veneer panels, cellular panels, and building boards are estimated to have risen from $115 million in 1979 to $300 million in 1984 as U.S. producers continued to seek new markets. Exports of edge-worked panels are estimated to have totaled about $55 million in 1984.

In 1984 approximately 30 billion square feet, valued at about $5.4 billion, was consumed in the United States. The increase reflects a rebound in construction activities. U.S. imports of plywood, wood-veneer panels, cellular panels, and building boards, amounted to about 1 percent of total U.S. consumption of such products in 1984.

It is estimated that in 1984, 1.6 billion square feet, or about 5 percent of total U.S. consumption of plywood, wood-veneer panels, cellular panels, and building boards, was edge worked.

The effect of the provision would be roughly a doubling of duty from $400,000 to $800,000.

Section 806. Certain Work Gloves

This section adds TSUS headnote language which specifies that, tariff purposes, work gloves made of a textile fabric which is coated with rubber or plastics will be classified as gloves of textile material rather than as gloves of rubber or plastics. This language has the effect of subjecting certain gloves to higher rates of duty and to quantitative restraints under the MFA. In addition, as these articles become subject to textile agreements, the gloves would become ineligible for duty-free treatment under GSP and CBERA.

Coated work gloves are cut and sewn from fabric that has been coated, filled, or impregnated with rubber or plastics. They are used for hand and/or product protection primarily by the industrial sector, including the automobile, steel, construction, and chemical industries. A small portion is sold to retailers for use in the home.

Textile work gloves which are coated or partially coated with rubber or plastics are presently classified in TSUS 705.86 as gloves of rubber or plastics, at a column one rate of 14 percent ad valorem. This provision would reclassify the subject gloves appropriately as gloves of textile material (under such items as 704.40 and 704.45 at a column 1 rate of 25 percent ad valorem). All these articles are eligible for preferential treatment under the U.S.-Israel Free Trade Agreement. In addition, this provision resolves a classification problem faced by Customs as in the example where a glove is considered to be of textile fabric only if the fibers are visible through the coating of the glove when examined under magnification.

Approximately 20 to 25 U.S. firms produce coated and partially coated work gloves. A few of these companies reportedly have plants in foreign countries, especially the Caribbean countries, where work gloves are either assembled from U.S.-cut parts or are manufactured in their entirety for shipment to the United States. Separate U.S. production data on these gloves are not reported.

U.S. imports of the subject coated and partially coated work gloves doubled from $3.4 million in 1981 to $7 million in 1984. They nearly doubled again in 1985 to $13 million.

Data on U.S. exports are not separately reported; however, exports are believed to have totaled less than 500,000 dozen pairs in 1985, or about 20 percent of the total imported that year.

Estimated revenue gains resulting from the enactment of this provision would be about $1 million annually.

Section 807. Broadwoven Fabrics of Man-Made Fibers

The provision would create three new items in the Tariff Schedules of the United States (TSUS) to cover woven fabrics of manmade fibers, other than those containing over 17 percent of wool by weight and those in chief value of glass. These three items would replace current TSUS item 338.50, to allow the creation of additional statistical annotations for such fabrics. Under the single five-digit provision currently applicable to such fabrics, 99 statistical annotations (using combinations of two digits from 01 to 99) are possible. With three tariff items, a total of 297 statistical annotations would be possible.

Man-made fiber broadwoven fabrics are produced in weaving mills and are often the only product manufactured by an individual mill. Approximately 40 percent of the fabrics are sold to apparel plants, with most of the balance used for home furnishings and industrial products.

The purpose of the provision is to establish more legal provisions for these products so that additional statistical annotations, by type of fabric, could be made available to assist the domestic industry in measuring import competition. The section is also intended to provide additional or transition data to facilitate the possible conversion from the TSUS to the Harmonized System in 1987.

The current column 1 rate of duty for TSUS item 338.50 is 17 percent ad valorem. The column 2 duty rate is 81 percent ad valorem, and no preferential LDDC rate is granted. Imports are not eligible for GSP or CBERA and may be subject to quantitative restraints under the MFA.

The quantity of broadwoven fabrics of man-made fibers produced domestically decreased from 12.6 billion square yards in 1980 to 11.85 billion in 1984.

The 1982 Census of Manufactures published by the Bureau of Census indicates that there were 340 firms operating 522 establishments weaving the subject broadwoven fabrics of man-made fibers (Standard Industrial Code 2221). According to the Census, these establishments employed 141,000 workers in 1982. The Bureau of

Economic Analysis of the Bureau of Census estimates that his industry employed 134,000 workers in 1984.

Imports increased from 290 million square yards in 1980 to 659 million in 1984. The leading suppliers in 1984 were Japan (38%), Italy (23%), and Korea (20%).

U.S. exports decreased from 576 million square yards in 1980 to 207 million in 1984.

Consumption remained fairly constant during 1980–1984 averaging 12.3 billion square yards per year.

This provision would have no effect on revenue.

Section 808. Silicone Resins and Materials

Section 808 would amend the Tariff Schedules of the United States (TSUS) to impose a single rate of duty on silicones in all forms. Specifically, it would amend headnote 2 to part 4A of schedule 4 of the TSUS, defining "synthetic plastics materials," to classify together silicone fluids, resins, elastomers, and other silicone products whether or not they are in solid form in the finished articles.

This provision would amend headnote 2 of part 4B of schedule 4 of the TSUS by inserting the following paragraph: "(c) For the purpose of the tariff schedules, the term "rubber" does not include silicones."

This section would insert a new tariff item 445.55 covering silicone resins and materials. The column 1 rate of duty would be 3.7 percent ad valorem. The provisions of the legislation would be effective upon enactment.

Silicone rubber would no longer be classified in TSUS item 446.15 which has a column 1 duty rate of "free" and which provides for synthetic rubber. Nor would the duty rates proposed for item 445.55 correspond to those for item 445.56, in which some of the subject articles are now classified but which would no longer occur after enactment of the new law.

Silicones are a unique family of polymers, containing alternating silicon and oxygen atoms in the polymer chain with various organic substitutes attached to the silicon atoms. Silicone fluids are clear liquids of varying viscosities used as antifoaming agents, release or parting agents, hydraulic or heat-transfer fluids, and permanent water-repelling agents for leather, fabrics, and masonry. Silicone elastomers are essentially high molecular weight fluids that offer good resistance to weathering. They also have been recently used in cosmetic or prosthetic implants. Silicone resins are used as electrical insulation for varnishes and as protective paint films.

In general, silicones possess good electrical properties and, as mentioned above, offer superior resistance to high temperatures and weathering. Silicones also possess a high degree of chemical inertness, are nontoxic, and are easy to process.

The purpose of the provision is to alleviate inconsistencies in silicone product classification. Currently silicones are classified in one of nine TSUS categories with duties ranging from free to 8.6 percent ad valorem. This is a result of the TSUS being established before silicones were commercialized. The rest of the industrial world treats silicones as a single product grouping in its tariff schedules; this legislation, then, would bring U.S. Customs practice in line with the customs practices of our trading partners. The silicone tariff rates of our major trading partners are much higher than ours, with rates of more than 10 percent. This section, however, would not raise U.S. tariffs. Rather, the provision is intended to be revenue neutral.

Silicone resins and compounds enter the U.S. under one of seven categories with column 1 duties ranging from about 8% ad valorem (silicone rubber) to 13.5% (other organo-silicon compounds, benzenoid). All but one of the categories are eligible for GSP and all are eligible for CBERA.

U.S. production of silicones in all forms decreased from 328 million pounds in 1979 to 292 million pounds in 1983.

The markets for silicone fluids, elestomers, and resins, the products of chief significance in the draft legislation are each dominated by three producers. These producers are Dow Corning, G.E., McGhan Nusil Corp., Union Carbide Corp, and the Dexter Corp.

Imports of the articles covered by this bill increased from 3.8 million pounds in 1981 to 13.9 million pounds in 1984. The corresonding increase in value was from $8.1 million to $23.3 million.

Export decreased slightly from 62.8 million pounds in 1981 to 62.1 million pounds in 1984. However, the value increased from $127.4 million in 1981 to $133.7 million in 1984.

Consumption dropped from 316.7 million pounds in 1981 to 243.8 million pounds in 1983. The ratio of imports to total consumption was 5.7 percent in 1983.

Section 809. Classification of Naphtha and Motor Fuel Blending Stocks

Section 809 would make several changes in part 10 of schedule 4 of the TSUS to modify the tariff treatment of some naphthas and create a new tariff item for motor fuel blending stocks. First, it would amend headnote 1 to part 10 to require that motor fuel blending stocks be classified in part 10 whether or not of benzonoid origin. Second, it would add to headnote 2 a new paragraph defining "motor fuel blending stocks" and require verification that they are actually used in manufacturing motor fuels. Third, it would create new TSUS item 475.27 which covers all motor fuel blending stocks which are defined in new paragraph (c) of headnote 2 as "any product (except naphthas provided for in item 475.35) derived from petroleum, shale oil, or natural gas whether or not containing additives which is actually used for direct blending in the manufacture of motor fuel." This item's tariff rate would be identical to those on imported motor fuel.

Finally, it would amend TSUS item 475.30 (covering kerosene derived from petroleum, shale oil, or both (except motor fuel)), to exclude from that item both such fuel and motor fuel blending stocks.

"Motor fuel blending stock" is a term used to refer to a variety of materials derived from petroleum, shale oil, or natural gas, which can be further processed into specification-grade motor fuel. It can also be used to describe materials that can be physically blended with other materials to make motor gasoline.

Motor fuel blending stocks could be used as a fuel in internal combustion or other engines but are outside the American Society of Testing Materials (ASTM) octane range. Generally, these products are mixed or blended with other chemicals, such as tetraethyl lead (TEL), to obtain a higher octane product that meets the ASTM octane specifications for motor fuel.

The provision is designed to correct an anomaly currently in existence in the TSUS. Under current law, the Customs Service interprets the TSUS to require them to impose higher duties on certain components of motor fuels than on finished motor fuels.

From late 1983 through July 1984 a number of bills were introduced in Congress pertaining to the tariff reclassification of catalytic naphtha and motor fuel blending stocks/unfinished gasoline. H.R. 4232 proposed a duty rate of .25 cent per gallon on catalytic naphta (a component used in the production of finished gasoline) and H.R. 5455 reclassified unfinished gasoline and motor fuel blending stocks by creating a new tariff item for them with a duty rate of 1.25 cents per gallon, the same rate as for finished motor fuel.

The Administration proposed a single alternative in May 1984 that was designed to satisfy both sets of bills. Due to the complexity of the products involved, the House-Senate conferees when discussing these bills determined that prior to further congressional action on the issue the ITC should be asked to examine the desirability of reclassification and its possible ramifications. The ITC released its report in April 1985.

Naphthas (whether straight or catalytic) and other motor fuel blending stocks are currently classifiable in part 1, and part 2, or part 10 of schedule 4 of the TSUS. Depending on its characteristics, a particular blending stock may be classified—

(1) in part 1, item 407.19, as a mixture, in whole or in part of distillation/cracking/reforming process with no other chemicals added. Catalytic naphthas are included in this category. Column 1 duty rate is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material.

(2) in part 10, item 475.35 as a mixture, *not* in whole or in part of benzenoid chemicals, which is the result of distillation/cracking/reforming process with no other chemicals added. Column 1 duty is 0.25 cent per gallon and column 2 is 0.5 cent per gallon.

(3) in part 2, item 432.10, as a mixture such as (1) and (2) above, to which are added lead alkyls, ethyl alcohol or other nonbenzenoid organic chemicals. Column 1 duty is 5 percent ad valorem but *not less* than highest rate applicable to any component material. (This can result in rates as high as 10–15 percent ad valorem).

If any of the above meet the ASTM criteria for motor fuel, they are classified in TSUS item 475.25 with a column 1 duty of 1.25 cents per gallon.

Between 1977 and 1985, approximately 158 refineries ceased operations. The typical closed refinery had a capacity of less than 50,000 barrels per day, with no cracking or other major crude petroleum upgrading facilities. During the period 1981–83, the refineries remaining open were primarily sophisticated units that operated at about 68–70 percent of capacity, compared with an average of 85 percent in 1979.

During the first half of 1984, the refinery capacity utilization rate averaged about 76 percent, as a result of higher gross inputs of crude petroleum to refineries and lower total refining capacity. Another factor contributing to the decrease in U.S. production of refined product and the subsequent decline in capacity utilization is an increase in offshore refinery operations. Currently, the world crude petroleum market is witnessing a situation of oversupply as well as excess refinery capacity. Some of the excess production of these offshore refinery facilities enters the U.S. market, which is already faced with decreased demand for these refined products.

U.S. production of motor gasoline dropped from 7.0 million barrels per day (MBD) in 1977 to 6.5 MBD in 1984. Distillate fuel oil dropped from 3.3 MBD to 2.7 MBD over the same period and residual fuel oil production dropped even more precipitously from 1.75 MBD to .9 MBD over the period. The only product to show a gain in production over the period was LP gas which increased from 1.5 MBD to 1.7 MBD.

According to the 1977 Census of Manufacturers, 349 U.S. refineries were in operation in that year; however, as of January 1, 1983, the number of operating refineries had fallen to 225, with a total capacity to process 16.2 million barrels of crude petroleum per day. As of January 1, 1985, there were 191 operating refineries in the United States, with a crude petroleum capacity of 15.9 million barrels per day. The decrease in the number of operating refineries since 1977 is believed to result from a combination of factors, including decreased domestic demand for petroleum products, market shifts, increased transportation costs, consolidation of refinery operations, the end of the Federal entitlements program for small refineries, and the decontrol of crude petroleum prices in 1981. Of the total refineries in operation, 131 are operated by independent refiners, which account for 30 percent of U.S. refining capacity.

Employment in the petroleum refining industry decreased from 108,300 workers in 1979 to 100,600 in 1983. The number of production workers declined from 72,800 in 1979 to 64,700 in 1983.

The major states producing petroleum products are Texas, California, and Louisiana. As of January 1, 1985, these states accounted for about 41 percent of the total number of U.S. refineries and 57 percent of the total refining capacity.

The United States is a net importer of petroleum products, primarily from Venezuela and refineries in the Caribbean nations. As a result of increased prices, the value of imports of all petroleum products increased from $11.4 billion in 1980 to $18.6 billion in 1984. U.S. imports of petroleum products could increase further as additional refinery capacity begins to be used in the OPEC nations as well as other conventional-energy-rich nations. As of January 1, 1985, the OPEC nations had the capacity to refine 4.8 million barrels per day of crude petroleum and are expected to have a refining capacity of 7.7 million barrels per day by 1987.

Residual fuel oils accounted for about 38 percent of the total value of U.S. imports of petroleum products in 1984. The major sources of U.S. imports of residual fuel oils in 1984 were the North Antilles (except the Bahamas) and Venezuela, together accounting for 41 percent.

U.S. import of distillate fuel oils increased irregularly from 15 million barrels, valued at $552 million in 1980 to 103 million barrels, valued at $3.3 billion in 1984. Venezuela, Mexico, and Canada supplied about 54 percent of total 1984 U.S. imports of distillate fuel oils.

U.S. imports of motor fuel increased irregularly from 19 million barrels in 1980 to 102 million barrels in 1984; however, during the same period the value of these imports increased from $716 million to $3.2 billion. In 1983, the major sources of U.S. imports of motor fuel were the Netherlands, accounting for 20 percent, and Venezuela, accounting for 16 percent. In 1984, this situation was reversed, with the Netherlands supplying 14 percent and Venezuela 22 percent.

The value of U.S. exports of petroleum products increased by 265 percent during 1980–82. The reasons for this apparent dramatic growth include an increase in the unit value of petroleum product export and the 1982 relaxation of export restrictions. However, U.S. exports in 1984 declined by 25 percent to a value of $3.6 billion, because of the strength of the U.S. dollar in relation to other currencies and an oversupply of products on the world market.

The major markets for petroleum products have been other developed nations lacking significant reserves of crude petroleum for use as a raw material base, especially Japan, Canada, the Netherlands, and Singapore. These four nations together accounted for nearly 50 percent of U.S. exports of petroleum products. A notable exception to this rule is Mexico, which was the third largest market in 1984.

Consumption of petroleum products decreased from 18.5 MBD in 1979 to 15.7 MBD in 1984. This resulted from consumer movement to conservation and use of alternative energy sources. Consumption of motor gasoline accounts for about 42 percent of total domestic consumption of petroleum products.

It is unlikely that the enactment of the legislation would affect annual customs revenues, since motor fuel blending stocks have been and are currently being dutied at the motor fuel rate of 1.25 cents per gallon.

Section 810. Slabs of Iron or Steel

Currently, the TSUS defines iron and steel slabs as having a thickness of not less than 2 inches and not over 6 inches. This section would strike out "and not over 6 inches" from the definition, which is set forth in headnote 3(c), part 2B of schedule 6.

Slabs, along with ingots, billets, blooms, and sheet bars, are the semifinished stock from which finished steel mill products are formed. The slabs are generally processed into such other products as sheets, strip, and plates, which may then be further fabricated into other products such as welded pipes. Slabs are produced by two methods: (1) ingot molding or (2) continuous casting. In ingot molding, molten steel is poured into ingot molds and allowed to cool. When the steel has solidified, the mold is removed, or stripped, from the ingot. Stripped ingots are then generally reheated and rolled into slabs. Continuous casting bypasses the making and reheating of ingots in the production of slabs. In this process, molten steel flows through an open-ended mold that forms the steel into slabs or other semifinished shapes. Continuous-cast slabs are generally regarded as higher quality products than their ingot-molded counterparts.

This section is intended to make the definition of steel slabs in the TSUS consistent with the steel industry's common practice of producing slabs exceeding 6 inches in thickness.

The TSUS defines a slab of iron or steel as a semifinished product of rectangular cross section, having a width of at least 4 times the thickness, not less than 2 inches and not over 6 inches in thickness. Slabs are classified in TSUS items 606.67 and 606.69. Products exceeding 6 inches in thickness, but otherwise meeting the TSUS definition of slab, are classified (a) as "ingots" under TSUS items 606.67 and 606.69, if they have been continuously cast, or (b) as "plates" under TSUS items 607.66, 607.72, 607.76, and 607.78, if they have been rolled from ingots. The bill would change the tariff treatment of these latter products, i.e., "plates" rolled from ingots.

In the case of such carbon steel slabs, the column 1 duties would be reduced from 6 percent ad valorem to 4.2 percent. For stainless steel and tool steel slabs, the column 1 duties would be reduced from 9.5 percent ad valorem to 5.1 percent. For alloy steel slabs other than stainless or tool steel, the column 1 duties would be increased from 3.8 percent to 5.1 percent. None of these products are eligible for GSP benefits; however, duty-free entry is afforded all these products under the CBERA and the U.S.-Israel Free Trade Area Agreement.

While slabs are produced by many domestic steel mills, they have not been a significant article of commerce. They are primarily produced by steel mills for captive consumption in the production of more advanced steel mill products. Separate data on the production of slabs are not available; however, production is estimated to have been 55–60 million short tons per year during 1983–85.

Imports of slabs more than doubled from 908,650 tons ($176 million) in 1984, to over 2 million tons ($358 million) in 1985. The sharpest increase occurred in slabs greater than six inches in thickness, the volume of which more than quadrupled, rising to 1.1 million tons, or 53 percent of total slab imports.

Data on exports of slabs are not separately collected.

Apparent U.S. consumption of slabs is estimated to have closely paralleled U.S. production.

Estimated revenue losses are about $1.8 million per year.

Section 811. Television Apparatus and Parts

This section would amend headnote 3(a) to part 5 of Schedule 6 to define the term "complete" when used in reference to a television receiver as a receiver "fully assembled in its cabinet". The current headnote defines complete as "fully assembled."

Next, the bill adds another headnote to part 5, Schedule 6. It would require that picture tubes imported in combination with other articles are to be classified under the tariff provisions for picture tubes (TSUS item 687.35 through 687.44) *unless* they are to be incorporated into complete television receivers, word processors or ADP terminals or they are put up in kits containing all parts necessary for assembly into complete television receivers, word processors or ADP terminals. Because of the change in language of headnote 3 from "fully assembled" to fully assembled in its cabinet", the kit exception would only apply if *all* parts, *including* a *cabinet*, were imported.

Three temporary suspensions were added to the scope of this section. The first added item 912.14 to the TSUS to provide for an 11 percent duty until October 31, 1987, for televison picture tubes which would have been included in assemblies (provided for in 684.96) except for the changes made by this section in headnote 4 to part 5 and except for those picture tubes provided for in new items 912.16 or 912.19. The second provision adds TSUS item 912.16 and provides temporary duty free treatment, through December 31, 1990 for color picture tubes having a video display diagonal of less than 12 inches. The third provision adds TSUS item 912.19 and provides temporary duty-free treatment through September 30, 1988 for television picture tubes having a video display diagonal of 30 inches and over. These limited, temporary exceptions for cathode ray tubes (CRT's) are not intended to suggest a precedent for generally exempting from duty any size CRT. These are limited exemptions which are intended to be confined to their specific facts.

The purpose of these amendments was to provide a phase-in period for the application of the 15% rate of duty on those picture tubes which Customs had ruled were eligible to be dutiable at 5% as assemblies and to suspend the duty on small and large TV picture tubes which are not currently produced in the United States.

This provision is intended to prevent importers from taking advantage of what the Committee believes to be a loophole in the TSUS. Japanese picture tubes are sent to Mexico where they are paired up with, but not assembled with, chassis and control panels. The merchandise is then shipped to the United States where it is entered as color television receiver assemblies at a duty rate of 5 percent ad valorem. The Committee believes that the picture tube portion of the entry should receive the 15 percent duty rate applicable to color television picture tubes.

CRT's are used in a variety of products including television receivers, monitors for television studios, monitors for security systems, certain types of data display terminals for automatic data processing uses, video games, oscilloscopes and terminals for word processing applications. Television picture tubes are a type of CRT.

The principal differences between imported and domestic television picture tubes are in the screen size designations and physical mounting dimensions for the various tubes.

Until recently domestically-produced data processing and word processing products, including those incorporating video display terminals, have been considered qualitatively better than the imported products. However, foreign producers, particularly in Japan, Korea, Taiwan and Singapore, are progressing rapidly and are approaching the level of sophistication of U.S.-produced video display terminal producers.

Color television picture tubes are classified under TSUS item 687.35 dutiable at a column 1 rate of 15 percent ad valorem, and a column 2 rate of 60 percent ad valorem. Imports are not eligible for GSP but are eligible for CBERA.

Color assemblies (including kits containing all parts necessary for assembly into complete receivers) are classified under TSUS item 684.96, dutiable at a column 1 rate of 5 percent ad valorem and a column 2 rate of 35 percent. Imports are not eligible for GSP, but may qualify for duty-free treatment under the CBERA.

Domestic shipments of color television picture tubes increased from 11.6 million units, valued at $881 million, in 1980 to 12.3 million units, valued at $938 million, in 1984. This closely tracks the trend for all CRT's.

Despite a slight slump in 1982, domestic shipments of television receivers increased steadily from 1980 to 1984. Shipments increased from 10.3 million units, valued at $3.3 billion, in 1980 to 13.3 million units, valued at $4.1 billion, in 1984 for a total increase of 29 percent in terms of quantity and 25 percent in terms of value for the period. The average unit value of domestic shipments decreased slightly from $319.50 in 1980 to $309.40 in 1984.

The CRT producing industry (including television picture tubes) is a concentrated industry. There are some thirty manufacturers of CRT's in the United States. Many are captive producers, i.e., they make CRT's for their own use, and others rebuild old CRT's. The leading six noncaptive producers (G.E., Philips, RCA, Sony, Westinghouse, Zenith) of new CRT's represent more than 80 percent of domestic shipments of such CRT's.

Producers of CRT's generally buy the components they need to assemble the CRT's rather than making them. Producers of CRT's tend to be large corporations which also make many other products. Specific data on employment in the production of CRT's is not available. Employment in the production of all electronic tubes amounted to 35.5 thousand persons in 1982, the last year that data was available.

The U.S. industry producing television receivers consists of 17 firms. Of these, 5 are U.S.-based firms, 1 is Netherlands-based, 8 are subsidiaries of Japanese firms, 2 are Taiwanese-owned and the last is a South Korean-based company.

Employment in the receiver industry has been declining in recent years and currently stands at about 25,000 persons. In 1983, the last year for which there were data, U.S. producers had gross profits amounting to over $240 million.

Matsushita Industrial Co., located in Franklin Park, Illinois, produces approximately 55 percent of the Panasonic and 82 percent of the Quasar color television sets sold in the United States. Most of the color televisions produced use imported television chassis and control panels assembled in Mexico. The assembled chassis and control panels are shipped to the United States together with color television picture tubes manufactured in Japan. The imported merchandise is then assembled into U.S.-produced cabinets with other U.S. and foreign components at Franklin Park.

U.S. exports of color television picture tubes decreased from 942,000 units, valued at $86.5 million, in 1980 to 347,000 units, valued at $32.4 million, in 1984. The largest export market in 1984 for U.S.-produced color television picture tubes was Canada. Exports to Canada in 1984 amounted to 313,000 units, valued at $28.1 million, or 90 percent of the total units exported.

Apparent consumption of color television picture tubes increased from 11.3 million units, valued at $827.8 million, in 1980 to 12.7 million units, valued at $952.2 million, in 1984. The ratio of imports to consumption, in terms of quantity, fluctuated between 5.2 percent and 8.1 percent during the period 1980 to 1984, with a ratio of 6.2 percent in 1984.

The effect of this provision on revenue would depend upon the dutiable value of the picture tube portion of the merchandise. If we assume that one-half of the value of each color television kit imported in 1984 was attributable to the tube, the estimated revenue increase resulting from the duty increase on the tube from 5 percent to 15 percent would be approximately $2.9 million.

Section 812. Extracorporeal Shock Wave Lithotripters

This section would reduce the column 1 and column 2 rates of duty on extracorporeal shock wave lithotripters. This would be accomplished by amending the article description for TSUS item 709.15, under which imports of such apparatus are classified as "electro-surgical apparatus, and parts thereof", to "electrosurgical apparatus other than extracorporeal shock wave lithotripters . . .". This amendment would change the TSUS classification of extracorporeal shock wave lithotripters from item 709.15 (column 1 rate of 7.9 percent ad valorem) to TSUS item 709.17 (column 1 rate of 4.2 percent ad valorem) "other electro-medical apparatus, and parts thereof". It would also reduce the column 2 rate of duty from 55 percent ad valorem to 35 percent ad valorem. This legislation provides for lower duty treatment retroactive to December 31, 1982, upon proper request filed with Customs.

The extracorporeal shock wave lithotripter is a sophisticated medical apparatus designed to disintegrate kidney stones without an incision by generating shock waves focused on the area of the patient's body where the kidney stone is located. The lithotripter system includes two shock wave generators, a dual-axis X-ray system, a stainless steel tub incorporating an ellipsoidal reflector and window at the bottom to permit the passage of X-rays, a platform on which the tub rests, a patient-positioning hydraulic system, a water-treatment system, and a control cabinet.

The purpose of this section is to remove an anomaly in the TSUS under which extracorporeal shock wave lithotripters are classified as "electro-surgical" apparatus at a duty rate higher than that for other "electro-medical" apparatus. At the same time, the Federal government, in its Medicare reimbursement procedures, classifies the lithotripter treatment as a "medical" rather than a "surgical" procedure, which results in a substantially lower reimbursement to providers of the treatment than would be the case if it were considered a surgical procedure. This inconsistent treatment for customs tariff and Medicare reimbursement purposes not only puts the provider at a disadvantage, but lessens the availability of the procedure at a reasonable cost to the patient.

Extracorporeal shock wave lithotripters are classified under TSUS item 709.15 as electro-surgical apparatus, and parts thereof, dutiable at 7.9 percent ad valorem under column 1. The column 2 rate is 55 percent ad valorem.

The articles covered by items 709.15 and 709.17 are eligible for duty-free treatment under GSP, CBERA, and the U.S.-Israel Free Trade Area Agreement.

There are four known companies in the United States currently developing extracorporeal shock wave lithotripters. None has yet received pre-market approval by the FDA to market its product in the United States. There has been no U.S. production of extracorporeal shock wave lithotripters, except for investigational use.

In 1985, 50 extracorporeal shock wave lithotripters with a total value of $90 million were imported into the United States. During January-March 1986, 18 additional lithotripters valued at about $32 million were imported.

There were no U.S. exports of extracorporeal shock wave lithotripters during 1981–85, or in the first 3 months of 1986.

Apparent U.S. consumption of extracorporeal shock wave lithotripters was accounted for entirely by imports during 1984, 1985 and in the first 3 months of 1986.

Based on an estimated $84 million in imports during 1986, it is estimated that the annual revenue loss would be $4,128,000.

Section 813. Uranium Hexafluoride (UF^6)

Section 813 would amend the Tariff Schedules of the United States (TSUS) by adding new tariff provisions in order to impose a duty of $3 per pound on both column 1 and column 2 imports of uranium hexafluoride (UF^6) that is imported for use in reactors in the United States from any country requiring uranium mined in that country to be converted or upgraded into UF^6 before export.

The section also provides that this new tariff provision would be eliminated by Presidential proclamation when the President finds that no foreign country requires the conversion or upgrading of uranium mined in that country into uranium hexafluoride before export from that country.

Almost all of the commercial value of uranium is accounted for by its use in the production of nuclear fuel for use in the generation of electricity by nuclear power plants. Most developed nations, including the United States, use light water reactors for the production of uranium fuel for use in nuclear power plants. In this process, uranium ore is converted to the oxide, uranium yellowcake (U^{308}), which is then converted to the chemical intermediate, uranium hexafluoride (UF^6).

The uranium hexafluoride goes through several processes until fuel pellets of uranium dioxide (UO^6) are produced.

Canada's nuclear power industry uses heavy water reactors, which permit the use of natural uranium as the fuel element. This dispenses with the need to produce either enriched uranium or its precursor, uranium hexafluoride.

The provision responds to the Committee's concern about a long-standing Canadian Government ministerial requirement that all uranium mined in Canada must be upgraded into uranium hexafluoride before export.

Although Canada's uranium upgrading policy had been in effect since 1958 (reaffirmed in 1974), it was not a source of significant concern to the domestic conversion industry before 1983 because of the limited capacity of the Canadian converter, and because exports of uranium from Canada to the United States for domestic use were relatively small. Since 1983, however, Canada's upgrading policy has become a major source of concern to the domestic conversion industry because of several factors, including the tripling of Canada's conversion capacity, reduced U.S. production of relatively low-grade uranium ore replaced in part by increased imports of high-grade uranium from Canada, and the phasing out of U.S. Government restrictions on enrichment of foreign-origin uranium.

Despite negotiations between the Canadian Government and the United States and despite repeated appeals by members of Congress to the Canadian Government, the Government of Canada has not rescinded its uranium upgrading policy.

Uranium hexafluoride enters the U.S. duty free. Uranium compounds of other types are also duty free.

Domestic production of uranium hexafluoride decreased from 21.2 thousand short tons (TST) in 1980 to 15.3 TST in 1984. Industry sources estimate that production and operating capacity rates will continue to decline. U.S. production of uranium hexafluoride declined less sharply than domestic production of uranium yellowcake (which declined by around 66 percent) during 1980–84, because the domestic conversion industry was able to take advantage of many long-term contracts with U.S. utilities that were negotiated during a period of tight uranium demand. The domestic conversion industry was also less adversely affected by imports than the uranium mining and milling industry because much of the uranium imported during 1982–84 was in the form of uranium yellowcake, and was converted into uranium hexafluoride in the United States.

Representatives of the domestic conversion industry feel that the Government of Canada's uranium upgrading policy is beginning to have some effect in reducing uranium hexafluoride production levels. These sources believe, however, that the full effect of Canada's uranium upgrading policy will not be felt until 1990 and thereafter, when major uranium conversion contracts with U.S. utilities expire.

There are two domestic facilities for the conversion of yellowcake, into uranium hexafluoride. Allied Corporation, in Morristown, New Jersey, operates a plant in Metropolis, Illinois. The other plant, located in Gore, Oklahoma, is operated by Sequoyah Fuels Corporation. The first has a capacity of 16.5 TST and the second has a capacity of 11.8 TST. Because of reduced market demand for uranium, employment at the two uranium hexafluoride facilities declined from 637 in 1980 to 557 in early 1985.

U.S. imports of uranium hexafluoride increased from 16.1 million pounds, valued at $626 million, in 1980 to 18.8 million pounds, valued at $849 million, in 1984. Most of these imports were enriched at Department of Energy (DOE) enrichment facilities in the United States and then reexported.

U.S. imports of uranium hexafluoride from Canada increased during 1980–84 from 4.0 million pounds, valued at $143 million, to 8.5 million pounds, valued at $274 million. U.S. imports of uranium hexafluoride from Canada continued to rise in 1985, increasing from 1.2 million pounds, valued at $44 million, in the first quarter of 1984 to 3.9 million pounds, valued at $101 million, in the first quarter of 1985.

Shipments of uranium hexafluoride produced by the domestic conversion industry to foreign utilities fluctuated between about

1,500 and 3,500 short tons (in units of U^{308} content) annually during 1980–84. A major portion of these exports went to Japan, West Germany, Taiwan, and South Korea. The estimated foreign market share acquired by the U.S. conversion industry during 1980–84 amounted to 10 percent or more. The ability of U.S. converters to attract foreign utilities during 1980–84 was limited because conversion costs amount to only a small percentage of the total cost of uranium fuel.

U.S. consumption information is not publicly available.

Because of the high level of uranium inventories currently held by U.S. utilities and uranium suppliers, which have depressed market prices for uranium, most industry sources believe that U.S. utilities would not immediately purchase uranium hexafluoride from Canada if a duty rate of $3 per pound were imposed. Eventually, however, because of the difference in production costs between domestically mined uranium and uranium mined in Canada, uranium hexafluoride from Canada could compete again in the U.S. market.

Based on the assumption that uranium hexafluoride from Canada would account for about one-third of the domestic market for uranium hexafluoride in 1991, or about 50 million pounds, customs revenue in that year due to imports of uranium hexafluoride from Canada would amount to about $150 million if the legislation were in effect.

Section 814. Marking of Watches and Watch Components

Section 814 amends headnote 4 to schedule 7, part 2E of TSUS, to retain present marking requirements except for the following changes:

—Dials would no longer be subject to marking requirements.

—The word "conspicuously" would be replaced by the word "legibly," because a conspicuous marking may not be possible on the bezel.

—A fifth mode of marking—mold-marking—would be added.

—The requirement concerning adjustments would be deleted.

—The manufacturer would be given the option of marking either the watch case or the bezel.

The purchase of a particular watch or clock is partly dependent on the reputation of the country of manufacture for quality. Since the consumer rarely inspects watch and clock components, the labeling of internal parts of a timepiece offers no perceptible advantage to the consumer in differentiating quality. Accordingly, this legislation would reduce regulatory requirements which provide no apparent advantage to the consumer. This section applies to articles entered on or after the 30th day after the date of enactment of this act.

The duty on watches and clocks varies from a fairly straight forward duty on the assembled clock or watch to a duty equal to the sum of duties attributable to case and movements. With only a few minor exceptions these articles are not eligible for benefits under the GSP but are eligible for CBERA treatment unless they contain any material that is the product of a column 2 country. Watches and watch movements produced or manufactured in an insular possession of the U.S. are eligible for duty free treatment if they conform to the quota and other requirements of headnote 6 to schedule 7 which details a rather complex program of preferences enacted into 1982 designed to assist the watch industry in the U.S. Virgin Islands.

The estimated value of U.S. producer's shipments of watches, clocks and components decreased from $996 million in 1980 to $841 in 1984. Quantity data are not available due to the product mix included in the legislation.

U.S. imports of watches, clocks, and components, in terms of value, increased from $1,025 million 1980 to $1,227 million in 1981. Such imports then dropped to $658 million in 1983 and increased to $887 million in 1984, or by 34 percent. The leading supplier of watches, clocks, and components in 1984 was Japan, accounting for $347 million, or 39 percent of the total. Switzerland and Hong Kong followed with $180 million and $164 million (20 and 19 percent) respectively.

U.S. exports of watches, clocks, and components, in terms of value, increased from $67 million in 1980 to $84 million in 1981. Since then, they have steadily declined to $60 million in 1984, or by 30 percent since 1981. The Philippines was the leading market, receiving $13 million, or 22 percent of the total in 1984. Canada and Taiwan were the second and third largest market, receiving $11 million and $6 million (18 and 10 percent) respectively.

Apparent U.S. consumption rose from $1,954 million in 1980 to $2,094 million in 1981. It then declined to $1,534 million in 1983. Apparent U.S. consumption rose 9 percent in 1984 over that in 1983, to $1,669 million.

There would be no revenue effect of enactment of this legislation.

Section 815. Importation of Furskins

Section 815 would end the prohibition on imports into the United States of ermine, fox, kolinsky, marten, muskrat, and weasel furskins which are the product of the Union of Soviet Socialist Republics (USSR). This would be accomplished by deleting headnote 4 to subpart B, part 5 of schedule 1 of the Tariff Schedules of the United States (TUSUS). The import ban has been in effect since January 5, 1952, with respect to products of the USSR.

Following is a brief description of each of the skins covered by this legislation:

Ermine—These furskins are derived from small weasel-like animals found most commonly in the USSR. These furskins are used chiefly in the manufacture of expensive jackets and coats.

Fox—These skins come from silver, black, and platinum foxes (grown on ranches) or red and grey foxes (from wild catch).

Kolinsky—These skins come from kolinskies which are animals closely resembling minks. They are found in and near Siberia and Manchuria and their pelts are used more for trimming than for coats and jackets.

Marten—These skins come from animals closely resembling sables. Martens are found in the U.S. and Canada, and certain closely related animals are found in the USSR and China.

Mink—These furskins are obtained from both captivity and the wild. In the dressing process the skin is tanned and the fur is cleaned and brushed. Mink furskins are used almost exclusively in the manufacture of fur coats, fur jackets, fur stoles and wraps, and as fur trim on cloth and leather jackets.

Muskrat—These skins are obtained from animals resembling beaver although smaller and lacking wide, flat tails. These skins are less expensive than the above skins and are used in the production of coats and jackets.

Weasel—These animals are found throughout the world. Their skins are commonly used for fur trim.

The Administration seeks passage of this legislation as described in a letter from Malcolm Baldrige to George Bush to . . . "further the President's policy of seeking a more constructive working relationship with the Soviet Union, and to reciprocate a commitment by Soviet Foreign Trade Minister Patolichev to improve the market access for business firms in the Soviet Union."

The column 1 rates ot duty for the furskins covered by this legislation vary from free (raw or not dressed skins except fox) to 9.3 percent ad valorem (silver, black, or platinum fox whether or not dressed). The column 2 rates range from free for raw or undressed skins to 50 percent for the above mentioned fox furskins. These articles are eligible for GSP (except raw or not dressed skins) and CBERA.

Only limited data are available concerning domestic production of furskins of the type involved in this legislation. Data on the number of mink pelts produced on U.S. mink farms and the value of such production, as collected by the U.S. Department of Agriculture, indicates that pelt production increased from 3.5 million pelts valued at $123.6 million in 1980 to 4.2 million pelts valued at $119.0 million in 1984.

Data on the wild catch during the 1979-80 season as collected by the American Fur Resources Foundation, indicates that in 1980 (the latest year data is available) the predominant catch was muskrat (9.2 million animals valued at $79.5 million), fox (790,000 animals valued at $39.0 million) and mink (430,000 animals valued at $9.6 million).

Two domestic industries exist, one producing furskins and one dressing furskins and manufacturing garments.

Furskins are derived from animals (in this country usually mink and, to a lesser extent, foxes) either raised in captivity on fur farms or ranches or obtained from the wild catch of trappers and hunters. In 1984, there were 1,069 mink farms in the United States. Foxes were raised on 14 percent of these farms in 1984. The leading mink producing state was Wisconsin with 241 farms in 1984 followed by Utah and Minnesota.

In 1984, there were approximately 1,390 fox farmers in the United States. The leading fox-producing state was Wisconsin, with 185 farms in 1984; other leading fox-producing states include Pennsylvania, Minnesota, and Utah.

Officials of the National Board of Fur Farmers, an industry trade association, indicate that almost all fur farms are small-scale, family-owned busineses and that no individual or small group accounts for a significant share of the industry's sales.

An estimated one to two million individuals trap and hunt for furskins in the United States. Only a small portion derive a significant income from such activities, and no one individual or firm accounts for a significant part of the trapping industry. The estimated income derived from all wild furskins has totaled $350 million to $500 million annually in recent years. Most trappers hunters and dressers handle furskins of a variety of species of animals.

The number of U.S. furskin dressers has been in a long-term decline. According to industry sources the number of U.S. furskin dressers is between 15 to 20 companies, concentrated in the New York City area, and the number of fur garment manufacturing companies is approximately 350.

Complete data concerning U.S. imports of the subject furskins are not available. Furskins of four of the species covered by the import ban (ermine, kolinsky, muskrat, and weasel) are not separately provided for, but instead are classified with other species not covered by the headnote under several residual or" basket" tariff items.

Data are available on three of the skins that are separately provided for in the TSUS (fox, marten, and mink). Imports of mink increased from $85.2 million in 1980 to $102.6 million in 1984. Fox increased from $19.8 million to $37.9 million over the same period and the increase of marten imports was $.9 million to $1.8 million.

The leading suppliers to the United States of mink, fox, and marten furskins in 1984 were Finland, Denmark, Canada, and Sweden. U.S. imports of furskins of the types enumerated in the headnote from countries receiving the column 2 rate of duty amounted to about $0.5 million in 1984, or less than 1 percent of total imports of the subject furskins.

Data concerning U.S. exports of the subject furskins are reported only for whole fox furskins, not dressed; whole muskrat furskins, not dressed, and whole mink furskins, dressed or not dressed. The value of exports of these skins dropped from $232.8 million in 1980 to $143.2 million in 1984.

The value of U.S. exports of furskins classified in the residual tariff items (including an unknown quantity of exports of furskins of the type covered by the import restrictions) and of furskins classified on the basis of their forms, (plates, mats, and so forth) decreased from $208.5 million in 1980 to $125.6 million in 1984.

Data on U.S. consumption are not available.

To the extent that ending the prohibition of U.S. imports of the enumerated furskins from the USSR would result in an increase in total U.S. imports of such furskins, there would be a gain in customs revenues. However, since U.S. imports of these furskins have been prohibited since 1952, any projection of the quantity of imports that may result from ending the prohibition is highly speculative. Such furskins would be dutiable at column 2 rates of duty. Since articles classified in TSUS item 124.10 are free of duty, ending the prohibition on imports from the USSR of articles classifiable in that tariff item would have no effect on customs revenues.

Section 816. Effective Dates

Section 816 sets forth the effective dates for the permanent provisions in Subtitle A of Title VIII of this Act. With the exception of section 814, which is effective with respect to articles entered on or after the *30th day* after enactment, all of the other provisions in Subtitle A, would be effective with respect to articles entered or withdrawn from warehouse on or after the *15th day* after enactment.

Additionally, a provision is made for retroactive application of two sections in Subtitle A—section 804 (hatters' fur) and section 812 (lithotripters)—if proper application is made therefor within 180 days after date of enactment.

Subtitle B—Temporary Changes in Tariff Treatment

Section 821. Color Couplers and Coupler Intermediates

This provision would amend items 907.10 and 907.12 of the Appendix to the TSUS to continue through December 31, 1990 the suspension of the column 1 rate of duty on photographic coupler intermediates provided for in item 907.10, an actual use provision; and on photographic color couplers provided for in item 907.12. The column 2 rate of duty would remain unchanged. The description of item 907.10 is amended to exclude from suspension the color coupler commonly referred to as C–1. This provision provides for duty-free treatment retroactive to September 30, 1985, upon proper request filed with Customs.

Coupler intermediates are organic chemical compounds that are used in the production of color couplers. A color coupler is a more advanced organic compound that is incorporated in photographically sensitized material and reacts chemically with oxidized color developers to form a dye. Color couplers are used to make color photographic paper, film and graphic arts materials.

The provision would enable the Eastman Kodak Co., a domestic firm, to continue to import duty-free for a temporary period certain color couplers and coupler intermediates that it does not make and that cannot be obtained domestically. Continuing the duty suspension would help keep its products (i.e., photographic color paper) competitive in U.S. and world markets. Eastman Kodak produces some color couplers and coupler intermediates for captive use; however, since its plants cannot meet all of its requirements, the company must import selected products.

The majority of imported coupler intermediates are currently classifiable in items 403.59, 404.90, and 406.42. Color couplers are classified in item 408.41, photographic chemicals. The column 1 duty rates vary from 8.5 percent ad valorem to 13.5 percent ad valorem. The column 2 rates vary from 7 cents per pound plus 50 percent ad valorem to 7 cents per pound plus 62 percent ad valorem.

Color couplers are eligible for duty-free treatment under the GSP but coupler intermediates are not. Both are eligible for duty-free treatment under the CBERA.

Data on domestic production is not available as it would reveal business confidential information.

Eastman Kodak is the principal domestic producer of coupler intermediates and color couplers, and its total production is for captive use in the production of photographic color paper.

Formerly, the 3M Co. produced photographic color paper, color couplers and intermediates in the United States, but also imported intermediates and color couplers from its Italian and English subsidiaries. 3M had been producing color couplers in the United

States from imported coupler intermediates to reduce its requirements for imported color couplers.

In 1982 it requested the introduction in Congress of the bill (S. 2889) that resulted in the suspension of duties on color couplers and coupler intermediates. According to industry analysts, despite the duty suspension, 3M found it increasingly difficult to produce these products profitably in the United States and in 1984 ceased domestic production.

Import statistics on coupler intermediates and color couplers are not separately maintained. Eastman Kodak reported that in 1983 it imported approximately 155,000 pounds of these products, mostly from Japan and Western Europe. Because color couplers and intermediates are continually changing, Kodak could not predict its future imports exactly. It estimates, however, that imports of these products will increase by approximately 10 percent per year during the next few years.

Exact data is not available but exports are estimated to be negligible.

Consumption data on coupler intermediates and color couplers are not available. The photographic color paper production in the United States, however, can be used to determine the trend in consumption of these chemicals over a certain period. During 1977–80, U.S. sales of photographic color paper increased from an estimated $72 million to an estimated $200 million, and industry sources estimate that this growth pattern continued through 1984.

Based on 1983 import data obtained from Eastman Kodak, the potential loss of revenue resulting from enactment of this provision would probably be about $110,000 per year.

Section 822. Potassium 4-Sulfobenzoate

This section would suspend through December 31, 1990 the column 1 rate of duty for p-sulfobenzoic acid, potassium salt (potassium 4-sulfobenzoate). Column 2 would remain unchanged.

P-sulfobenzoic acid is used as an intermediate in the manufacture of probenecid which is a diuretic.

As one of two U.S. manufacturers of the drug probenecid, Salsbury Laboratories will use imported p-sulfobenzoic acid exclusively to produce probenecid. A company official states that by eliminating the duty on the subject chemical, U.S. manufactures of probenecid will then be able to compete in the end-product market with low-cost imported probenecid. Approximately 26 percent of the U.S. apparent consumption of probenecid was accounted for by imports in 1983.

This chemical is classified in item 404.28 of the TSUS. The column 1 rate of duty of p-sulfobenzoic acid is presently 1.7 cents per pound plus 17.9 percent ad valorem. The column 2 rate of duty is 7 cents per pound plus 57 percent ad valorem. It is not eligible for GSP but is eligible for CBERA.

The chemical p-sulfobenzoic acid, potassium salt is not produced in the United States. Use of this chemical by Salsbury Laboratories, Inc. as an intermediate in production of probenecid began in 1983.

No records exist to show either the quantity or value of imports of this chemical during 1980–85. An industry source estimates that approximately 7,300 pounds, valued at about $26,000, were imported in 1984. The same source estimates 1985 imports to be about 9,100 pounds, valued around $32,000.

U.S. export data for p-sulfobenzoic acid and its salts are not available as this chemical is classified in a residual (basket) Schedule B number. According to industry sources, there are no U.S. exports of the subject chemical.

U.S. consumption is estimated to be approximately that of imports.

Annual revenue losses expected to be $15,000.

Section 823. 2,2'-Oxamidobis[Ethyl 3-(3,5-Di-Tert-Butyl-4-Hydroxyphenyl)Propionate]

The provision would temporarily suspend the column 1 rate of duty on imports of 2,2'-oxamidobis-[ethyl 3-(3-5-di-tert-butyl-4-hydroxyphenyl)propionate], classified in item 405.34 of the TSUS through December 31, 1990. The column 2 rate of duty would remain unchanged.

The subject chemical is a synthetic organic chemical used by industrial processors and fabricators as a high-performance antioxidant and metal deactivator in various polymers, such as polypropylene, polyethylene, and poylstyrene.

Although other antioxidants are used in polymer applications, this chemical meets specifications in specific applications not served by any other antioxidant currently produced in the United States.

The temporary duty suspension is intended to permit Uniroyal, which is the major U.S. importer, to supply this chemical to its customers in a cost-efficient manner. It is not currently produced in the United States. The Uniroyal Chemical Division of Uniroyal, Inc. has indicated it cannot produce the chemical domestically without diverting fully utilized production capacity and facilities from the manufacture of other chemicals.

This chemical is classified in item 405.34 of the TSUS. The column 1 rate of duty is 13.5 percent ad valorem, and no preferential duty rate is afforded to imports from LDDC's. The column 2 rate of duty is 7 cents per pound plus 58 percent ad valorem. Imports of this chemical are not eligible for duty-free entry under GSP. However, imports are eligible for CBERA.

There is no domestic production and data are not available on U.S. imports.

If the estimated import and price levels of 1984 remain unchanged, the potential annual customs revenue loss would be approximately $50,000.

Section 824. Dicyclohexylbenzothiazylsulfenamide

Section 824 would suspend the column 1 rate of duty for dicyclohexylbenzothiazylsulfenamide (DCBS), classified in item 406.39 of the Tariff Schedules of the United States (TSUS), through December 31, 1990, and would add item 906.45 to subpart B of part 1 of the Appendix to the TSUS. The column 2 rate of duty would remain unchanged.

DCBS is a rubber-processing accelerator which speeds the cross-linking reaction of rubber with sulfur. Sulfur bridge cross-links (vulcanization) makes the rubber harder and stronger, while eliminating the tackiness of untreated rubber. Rubber compounders use an average of 1.5 pounds of DCBS per 100 pounds of raw rubber.

The present duty on DCBS increases the manufacturing cost of steel-belted radial ply tires. At the present time, DCBS is not produced in the United States.

DCBS is classified in TSUS item 406.39, with a column 1 duty rate of 1.7 cents per pound plus 16.2 percent ad valorem. The column 2 rate is 7 cents per pound plus 52 percent ad valorem. DCBS is not eligible for duty free treatment under the GSP. However, imports from designated Caribbean countries could be eligible for duty free treatment under the CBERA.

There is no domestic production.

DCBS is regarded as a specialty adhesion promoter, with specific application in the steel belting construction of radial tires. Domestic producers of other sulfenamide accelerators are American Cyanamid Co., B.F. Goodrich Chemical Co., the Goodyear Tire and Rubber Co., Monsanto Corp., and Uniroyal, Inc. These producers regard DCBS as a low-volume specialty accelerator that will not adversely affect their production or sales of sulfenamide accelerators.

The major importer of DCBS is Mobay Chemical Company, which imports it from its parent company, Bayer A. G. of the Federal Republic of Germany. From 1979 to 1983 imports of DCBS ranged from 88,000 to 190,000 pounds. Industry sources estimate that imports of DCBS during 1984 were less than 500,000 pounds.

There were no U.S. exports in the past five years.

Date on apparent U.S. consumption are not available.

The estimated annual revenue loss is estimated to be $373,000.

Section 825. 2,4-Dichloro-5-Sulfamoylbenzoic Acid

Section 825 would add item 906.48 to the TSUS to temporarily suspend the column 1 rate of duty on 2,4-dichloro-5-sulfamoylbenzoic acid (lasamid). The column 2 would remain unchanged. The duty suspension would be effective through December 31, 1990.

Lasamid is an intermediate chemical used to produce the drug furosemide. Lasamid is an odorless, white crystalline powder soluble in acetone, alcohol, and weak caustic solutions. As of 1985 only one U.S. pharmaceutical firm manufactured furosemide domestically and this same firm consumes about 95 percent of total imports of lasamid. Duty suspension would enable the company to be more competitive with imported furosemide.

Lasamid is currently classified in TSUS item 406.56 at a column 1 duty rate of 1.7 cents per pound plus 18 percent ad valorem. The column 2 rate is 7 cents per pound plus 57.5 percent ad valorem. Lasamid is not eligible for GSP benefits but does not qualify for duty-free entry under the CBERA.

There is only one significant importer of lasamid and imports have ranged from 48,766 to 121,915 pounds over the past five years. In 1984 imports were 40,590 pounds. Lasamid cost approximately $10 per pound.

Data on U.S. consumption is not available.

Estimated revenue losses in 1987 are $198,000, and in 1988, $206,000.

Section 826. Derivatives of N-[4-(2-Hydroxy-3-Phenoxypropoxy)-phenyl]Acetamide

This provision would add new item 907.11 to the Appendix to the Tariff Schedules of the United States (TSUS) in order to suspend the column 1 rate of duty on derivatives of N-[4-(2-hydroxy-3-phenoxypropoxy)phenyl]acetamide through December 31, 1990.

The subject product is a fortifier for epoxy resins that is capable of improving the strength and elasticity of the resin while avoiding brittleness. The subject product is not currently produced in the United States. The epoxy resins and articles of plastics that are capable of being improved by the fortifier are produced in the United States. Import duties on the fortifier increase the cost of the fortifier to domestic epoxy resin manufacturers.

The fortifier for epoxy resins is classified in TSUS item 407.19, covering other mixtures in whole or in part of any of the product provided for in subpart 1B of Schedule 4 of the TSUS (benzenoid industrial organic chemicals). The column 1 duty rate of the fortifier is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material; the column 2 rate of duty is 7 cents per pound plus 43.5 percent ad valorem, but not less than the highest rate applicable to any component material. The fortifier is eligible for duty-free entry under CBERA and GSP (unless it is imported from Mexico or Romania).

If the active ingredient of the fortifier were imported in a form that is 95 percent or more pure, the active ingredient would be classified under TSUS item 405.34. The column 1 rate of duty of 13.5 percent ad valorem under this tariff item would not apply to the mixture since it is lower than the column 1 rate of duty for TSUS item 407.19. The column 2 rate of duty under item 405.34, 7 cents per pound plus 58 percent ad valorem, would apply to the mixture if it were the highest rate applicable to any component material.

There is no domestic production.

Separate import data for the fortifier are not available, since this mixture is one of many articles classified as "other benzenoid chemical mixtures". Since this product was patented in 1984, it is unlikely that there were any imports in commercial quantities. The only known source of this mixture is Canada. No imports were supplied by columnn 2 sources. The importer of this chemical is Uniroyal, Inc.; the firm has projected a growing U.S. market for this product.

Apparent U.S. consumption is estimated to be approximately equal to the level of imports.

If the import quantities and price levels projected for 1985–87 are realized, the potential annual loss of customs revenue would amount to an annual loss of revenue of approximately $157,000. The quantity of imports of the fortifier is expected to increase significantly because of the improved strength and reduced brittleness that it imparts to epoxy resins.

Section 827. 1,2-Dimethyl-3,5-Diphenylpyrazolium Methyl Sulfate (Difenzoquat Methyl Sulfate)

This section would amend Subpart B of part 1 of the Appendix to the TSUS by adding a new item, 907.24, described as 1,2-dimethyl-3,5-diphenyl-1-H-pryazolium methyl sulfate (difenzoquat methyl sulfate) provided for in item 408.19 of the TSUS. The column 1 rate would be duty-free through December 31, 1990. The column 2 rate would remain unchanged.

The chemical difenzoquat methyl sulfate is synthetically produced from benzene derivative and other chemicals. It is used as a selective postemergence herbicide for the control of wild oats in barley and wheat.

Elimination of the duty on this herbicide would result in a lower cost of the final product to U.S. consumers according to American Cyanamid Co., the only producer of this herbicide.

The herbicide difenzoquat methyl sulfate is currently classified in a residual "basket" category for herbicides, not artificially mixed, which are provided for in the Chemical Appendix to TSUS item 408.19. Articles entered under item 408.19 are presently dutiable at a column 1 rate of 13.5 percent ad valorem and a column 2 rate of 7 cents per pound plus 48.5 percent ad valorem.

The herbicide is currently eligible for duty-free treatment under GSP and also under CBERA. Since September 1, 1985, imports of this product from Israel may be entered free of duty.

There has been no domestic production in the past 5 years. American Cyanamid holds the patent on this product and produces it only through their subsidiary in Belgium.

In 1984, imports of this herbicide amounted to approximately 540,000 pounds. All of the imports in 1984 came from the Netherlands and were shipped to American Cyanamid.

Data for domestic consumption of this herbicide are not available; however, an industry source indicated that domestic consumption during the past five years was essentially the same as imports.

Based on data provided by an industry source, annual revenue losses are expected to be about $370,000.

Section 828. Dicofol

Section 828 would temporarily suspend the duty on 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (Dicofol) through December 31, 1990. This legislation would provide for duty-free treatment retroactive to September 30, 1985 upon proper request filed with Customs.

Dicofol is a synthetically produced chlorinated insecticide (more specifically, a miticide). It is currently being used on cotton, citrus fruits, field corn, beans, and approximately 60 other types of crops for the control of various species of mites. Other domestically produced miticides are also used to control mites on certain crops; however, Dicofol has the largest number of registered crop uses compared with other miticides. In many instances, Dicofol is the only registered miticide available.

Dicofol is classified in TSUS item 408.28, covering other insecticides. Articles covered by this item are dutiable at a column 1 rate of 12.5 percent ad valorem and a column 2 rate of 7 cents per pounds plus 64.5 percent ad valorem.

TSUS item 907.15, which had provided for a temporary duty reduction of 6.9 percent ad valorem, expired on September 30, 1985.

Dicofol, as an article classified in TSUS 408.28 is eligible for GSP and CBERA.

There is no domestic production.

According to industry sources, U.S. imports of Dicofol in 1984 amounted to approximately 2.6 million pounds, valued at $5.9 million. The majority of these imports came from Italy and were shipped to Rohm and Haas. U.S. imports of Dicofol from the other foreign source in 1984, from Makhteshim-Agan in Israel, entered free of duty under the GSP. The exact quantity of GSP imports in 1984 is not available, since other chemicals are classified in the same tariff item.

Based on 1984 import levels, annual revenue loss is estimated to be $600,000 during 1987–1990.

Section 829. Certain Knitwear Fabricated in Guam

Section 829 suspends the duty on sweaters from Guam assembled by U.S. citizens, nationals, or resident aliens from preshaped parts within the guidelines of headnote 3(a) and within quota levels through October 31, 1992. This section is intended to apply solely to sweaters imported from Guam. Notwithstanding section 603(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, it would not create new benefits or requirements for articles imported from the Northern Mariana Islands. It is the Committee's specific intention that products imported into the customs territory of the United States from the insular possessions shall continue to enter under General Headnote 3(a) of the Tariff Schedules of the United States. This section applies to articles entered after October 31, 1985.

The articles in this legislation are full-fashioned sweaters, items of knit outerwear covering the body but not extending below midthigh. Full-fashioning is a method of construction in which the sweater parts are made to conform to the contours of the human body. The preshaped parts are then joined by a process known as looping or by sewing.

The purpose of the section is to reinstate existing practice with respect to country of origin determinations for duty assessment purposes for knit to shape apparel imported into the U.S. from Guam. The existing country of origin determination allows products to be considered products of insular possessions (general headnote 3(a)(i) if they do not contain foreign materials amounting to more than 70 percent of their total value. Sweater imports from Guam and the Commonwealth of Northern Mariana Islands (CNMI) have been able to benefit from this provision in the past.

Customs has recently, however, issued new final rules of origin for textiles which state that "trimming, and/or joining together by sewing, looping, linking, or otherwise completed knit-to-shape component parts produced in a single country . . . . do not constitute a substantial transformation; therefore, a sweater completed by such a process is a product of the country of origin of the component part."

The interagency Committee for the Implementation of Textile Agreement (CITA) has established special quota exemptions for Guam and CNMI. However, the governments of these two insular possessions have protested that the quantities are too small and combined with the imposition of duties, will result in severe economic hardship.

This section addresses only the tariff, not the quota.

During 1984, the average rate of duty paid on sweaters was 27 percent ad valorem; the actual MFN rates ranged from 5 percent to 38.8 percent ad valorem. On February 27, 1985, CITA provided for special MFA quota exemptions for exports of sweaters from Guam and CNMI between November 1, 1984 and October 31, 1985. Exempted from quotas were 160,000 dozen sweaters of cotton, wool or man made fibers assembled in Guam and 70,000 dozen sweaters assembled in CNMI. Sweaters exceeding these limits are charged against the quota of the country of origin, usually where the parts were knit.

Domestic production of all sweaters and textile fibers increased from 9.2 million dozen in 1979 to 10.7 million dozen in 1983.

The number of establishments in the U.S. sweater industry declined from 837 in 1980 to 790 in 1983. At the same time employment decreased from 69,300 workers to 62,200. Much of the decline has been attributed to the increase in imported sweaters and the increased use of new high-technology, less labor-intensive machinery.

Imports of all sweaters of textile fibers rose from 12.5 million dozen in 1980 to 20.2 million dozen in 1984.

The four major suppliers—Taiwan, Hong Kong, Korea, and China—accounted for 76.5 percent of the 1984 imports. Faced with tight quotas, manufacturers in these countries have moved more production offshore to subsidiaries in smaller, less-developed countries and to U.S. insular possessions in the Pacific that have less restrictive quotas or no quotas.

Imports from Guam and the CNMI, which together accounted for approximately one percent of all sweater imports in 1984, increased significantly from 1982 to 1984. In 1982, the first year of production, Guam exported 33,000 dozen sweaters, valued at $2.7 million. By 1984, shipments of sweaters from Guam had increased 245 percent to 114,000 dozen, valued at $10 million. Production of sweaters in the CNMI began in 1984, when exports to the United States totaled 40,000 dozen, valued at $5 million.

Total sweater exports were small compared with imports and declined during 1980–84. Producers attributed this decline to the increased strength of the U.S. dollar and the resulting decline in the price competitiveness of their sweaters abroad. Exports decreased by 42 percent in quantity and by 56 percent in value during 1980–84 to 77,000 dozen, valued at $2.6 million.

Consumption rose from 19.2 million dozen sweaters in 1979 to 26.3 million dozen in 1983.

No change in revenue effect is expected as currently these sweaters are entering the U.S. duty free.

Section 830. 3,7-Bis(Dimethylamino)Phenazathionium Chloride

Section 830 would provide for a suspension of the column 1 rate of duty for methylene blue. The column 2 rate of duty would not be changed. The duty suspension would be effective with respect to articles entered or withdrawn for consumption on or after the 15th date after the day of enactment of the bill, and would be in effect through December 31, 1990.

Methylene blue is used as a dye for cotton and wool in the textile industry, as an indicator in chemical oxidation-reduction reactions, as a biological and bacteriological stain, as an antidote to cyanide poisoning, and as an anodyne and an antiperiodic. In addition, it is used as a processing stabilizer in the manufacture of acrylic monomers. Although other chemical stabilizers are produced in the United States, this chemical meets specifications in selected applications not served by the other stabilizers.

The column 1 rate of duty of methylene blue is 20 percent ad valorem and the column 2 rate is 7 cents per pound plus 70 percent ad valorem.

Imports of this product are not eligible for GSP but are eligible for CBERA.

There is no domestic production.

Imports have averaged 36,000 pounds per year in the period 1979–1983 with the exception of a spurt in imports in 1980 to 94,000 pounds.

Based on most recent import data, revenue loss would be approximately $3,000 per year during 1987–1990.

Section 831. 3,5-Dinitro-O-Toluamide

Section 831 would temporarily suspend the column 1 duty on 3,5-dinitro-o-toluamide (TSUS 411.93). Column 2 would remain unchanged. The suspension would be through December 31, 1990.

The chemical, 3,5-dinitro-o-toluamide (commonly known as zoalene), is a bacteriostat that is used specifically as an additive to animal fees to inhibit or delay the development of animal coccidiosis, a disease caused by protozoan parasites. The disease primarily affects domestic animals and birds and only occasionally affects man and horses.

Salsbury Laboratories is the only domestic producer of zoalene. Demand for the product is confined to a small segment of the overall market for coccidiostats. As such, the firm is of the opinion that it might prove to be more economical and competitive to import the product as needed, rather than maintain domestic production. The possible suspension of the duty may be a significant factor influencing their decision.

The column 1 duty rate for zoalene is 8.1 percent ad valorem and the column 2 duty rate is 7 cents per pound plus 67.5 percent ad valorem. Zoalene is not eligible for duty free treatment under the GSP but is eligible for CBERA duty free treatment.

Since there is only one domestic producer of this product, production data cannot be published because they would reveal confidential business information.

Zoalene accounts for less than a 10 percent market share among coccidiostats. The overall U.S. market for coccidiostats is estimated to amount to about $75 million to $100 million annually. There are at least three other such drugs that are more commonly used and together hold approximately 70 to 90 percent of the market, according to industry sources. They could, conceivably, be substituted in place of zoalene. In general, however, the use of a particular coccidiostat in a given situation is determined by the species of coccidia involved and/or on whether the chemical agent is approved for use in the particular species and/or class of species needing treatment. Each of the coccidiostats has its own range of effectiveness. Thus, although some are used more commonly than others and may be able to be substituted for one presently in use, they do not necessarily cover the same scope in terms of species.

Import data are unavailable because this product is classified in a residual or "basket" TSUS category. According to an industry source, however, there have been no imports of zoalene in the last five years. The major sources for this product are Israel and Spain. An industry source has quoted an approximate market price of $2.00–$5.00 c.i.f. per pound for this product, using the current market price from Spain as an example.

Revenue losses are estimated to be $14,000 annually.

Section 832. Secondary-Butyl Chloride

This section would add item 907.55 to the appendix to the Tariff Schedules of the United States (TSUS) to provide for a suspension of the column 1 rate of duty for secondary-butyl chloride through December 31, 1990. The column 2 rate of duty would not be changed.

The primary use of secondary butyl chloride is in the production of sec-butyllithium, a powerful chemical base and alkylating agent. Sec-butyllithium is in turn used by pharmaceutical and specialty chemical firms in the production of high-value-added chemicals.

Secondary butyl chloride is not currently produced in the United States, nor is it likely to be in the near future because of the extensive capital investment required, the corrosive materials used in the process, and the risks the producers must take. Downstream products of secondary butyl chloride, notably sec-butyllithium, are produced in the United States, and the suspension of import duties on secondary butyl chloride would allow domestic firms to compete more effectively with foreign producers of downstream products.

Secondary butyl chloride is classified under TSUS item 429.47, which has a column 1 rate of duty of 18 percent ad valorem, and a column 2 rate of 114.5 percent. Imports from eligible countries may qualify for the GSP and imports from beneficiary Caribbean countries may be eligible for duty free treatment under the CBERA.

Separate import data for secondary butyl chloride is not available. Imports of secondary butyl chloride are estimated to have remained at a level of about 400,000 pounds, valued at about $500,000, since 1980.

The only two known importers of secondary butyl chloride are Lithium Corporation of America, located in Bessemer City, NC, and Foote Mineral and Chemicals, located in Johnsonville, TN. Both use secondary butyl chloride in the production of sec-butyllithium and purchase from the only known foreign producer, Deutsche Texaco AG Chemie of West Germany.

Assuming the import quantities and price levels of 1984 remain unchanged, the potential annual loss would amount to $9,000. Import quantities are not expected to increase significantly because of limited demand for the downstream chemical products.

Section 833. Certain Nonbenzenoid Vinyl Acetate-Vinyl Chloride-Ethylene Terpolymers

Section 833 would suspend the column 1 rate of duty on imports of nonbenzenoid vinyl acetate-vinyl chloride-ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate, through December 31, 1990.

Vinyl acetate-vinyl choloride-ethylene terpolymer is a graft polymer and is used mainly in the manufacture of protective sheathing for fiber optic telecommunications cable. Small quantities of the terpolymer are also used as impact modifiers in the manufacture of rigid plastic profile forms for the construction market.

The terpolymer covered by this legislation is not now produced domestically and reportedly has no directly competitive domestic counterpart in the fiber optics sheathing market. The terpolymer is known to be imported by two U.S. firms at present.

Pantasote uses imported graft polymers to manufacture a patented plastic compound used to manufacture protective sheathing for fiber optic cable. It is the sole supplier of this patented material which it sells to a leading U.S. telecommunications company. The purpose of the proposed duty suspension is to enable Pantasote to continue to profitably manufacture this product, and to enable the telecommunications company to produce fiber optics competitively. No other U.S. company is producing these graft polymers.

Vinyl acetate-vinyl chloride-ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate, is classified under TSUS item 445.48, which provide for other vinyl resins. Item 445.48 has a column 1 duty rate of 5.3 percent ad valorem and a column 2 rate of 43.5 percent. It qualifies for GSP and CBERA duty free treatment.

There has been no domestic production since 1984 when the sole U.S. producer, Pantasote decided to go offshore to fulfill its needs for the product.

Official import statistics for the terpolymers covered by this legislation are not available. Imports of this product come from a firm in West Germany that is reportedly the only source producing a terpolymer with the properties necessary to meet the strict standards of the fiber optics industry. Pantosote, Inc. is the principal importer of the product. It began importing this material at the end of 1984 and projects that imports will be less than 5 million pounds in 1985, and will be less than 10 million pounds by 1989. Prior to 1984, imports of this terpolymer were negligible.

Based on projected imports, annual revenue loss is estimated to be from $196,000 to $419,000 depending on how much of each type of the product is imported.

Section 834. Tungsten Ore

This provision would suspend the column 1 rate of duty on tungsten ore through December 31, 1990. The column 2 rate of duty would not be affected.

Tungsten ore is the crude mineral form from which tungsten metal is obtained. The extreme hardness of tungsten makes it a preferred metalworking material for cutting edges of machine tools subject to intense wear or abrasion, as well as for metal surfaces in forming and shaping dies. The mining and petroleum industries, for example, use considerable quantities of tungsten carbide in drill bits, in the cutting edges of earth moving equipment, and in crushing machinery.

Mill products made from tungsten metal powder are used by the electronics and electrical industries.

In 1984 the end uses of tungsten were as follows: metalworking, mining and construction machinery and equipment, 75 percent; electrical machinery and equipment, 9 percent; lamps and lighting, 7 percent; transportation, 5 percent; and other, 4 percent.

According to industry sources, in the past few years there has been very little domestic tungsten concentrate available for the processing industry since (1) mine production has been at low levels for three years due to low concentrate market prices, and (2) most mine production has been captively consumed by producers of ammonium partungsate. The United States relied on imports of tungsten ore and concentrate for over 55 percent of reported consumption for the past three years, with well over half of the imports entering duty-free as a result of GSP. Domestic mining/processing companies purchase imports to augment their own production and could, therefore, benefit from the temporary duty suspension which would have the result of lowering the cost of the imported raw material.

U.S. imports of tungsten ore and concentrate are classified in TSUS item 601.54 with a column 1 duty of 17 cents per pound. Tungsten ore is eligible for duty-free entry under both the GSP and CBERA.

The tungsten industry is highly concentrated, and most companies are vertically integrated. In 1984, about 95 percent of the domestic tungsten concentrate production came from three mines in California and Colorado. Most major domestic mines operated below capacity or were temporarily closed, primarily due to low concentrate prices and demand. Mine capacity utilization was 24 percent in 1984.

U.S. imports of tungsten ore increased from 11.3 million pounds in 1980 to 12.8 million pounds in 1984. In 1984, tungsten ore was supplied by Canada (25 percent), Bolivia (22 percent), Thailand (13 percent), Portugal (10 percent) and Peru (10 percent). There were no imports of tungsten ore from column 2 sources. Of the GSP imports, Bolivia accounted for 32 percent; Thailand, 18 percent; Portugal, 15 percent; and Peru, 15 percent.

U.S. exports of tungsten ores decreased from 2.0 million pounds in 1980 to .3 million pounds in 1984. The market for tungsten ore in 1984 were West Germany, 38 percent; Austria, 22 percent; Brazil, 19 percent; Mexico, 16 percent; and France, 5 percent.

Apparent U.S. consumption of tungsten concentrates (pounds of contained tungsten) decreased from 20.4 million pounds in 1980 to 18.9 million pounds in 1984.

Based on the levels of total and GSP imports of tungsten ore in 1984, it is estimated that enactment of this legislation would result in the loss of customs revenues of approximately $659,000 annually.

Section 835. Certain Stuffed or Filled Toy Figures

Section 835 would temporarily suspend the column 1 rate of duty applicable to imports of stuffed or filled toy figures of animate objects, not having a spring mechanism and not exceeding 25 inches in either length, width, or height and valued over 10 cents per inch of height, classified in items 737.30 and 737.40 of the TSUS. The duty suspension would be in effect through December 31, 1990.

These products are stuffed toy animals or figures having predominantly humanoid or animal-like features and are not commonly known as dolls. Stuffed toy figures of animate objects range from small inexpensive curiosities to larger-than-life-size animals and characters costing many hundreds of dollars. One category of stuffed animal is the low-quality, inexpensive animal of rather simple design, generally used as prizes in carnival games. However, the proposed legislation only covers those figures valued over 10 cents per inch of height, a category in which few carnival stuffed toys fall. The remaining stuffed toys either have a smooth cloth exterior or are plush—a trade term referring to a soft and pliable stuffed toy generally having a furry or velvet-like exterior that may simulate the coat of a living animal.

Although this product group consists of toys both for children's use and for collection or decoration, most stuffed toys are intended for use as children's toys.

Complete stuffed toy figures and skins for such figures are domestically produced. Because stuffed toy animals are often large in size, reduced freight costs are often more important than higher labor costs in encouraging domestic production. Therefore, domestic production is generally concentrated in the largest toys and imports in the smaller sizes. However, the freight cost for skins is a much less important factor than the labor cost, so that there is significant domestic production consisting of stuffing imported skins. In general, imports are said to be comparable in quality to domestically produced stuffed toys.

This provision results from the varied application of duty-free treatment of the subject articles under GSP and CBERA. Korea, the leading foreign supplier exceeded its competitive need limitations and Taiwan lost its duty free eligibility on July 1, 1985, for the same reason. China, the third largest supplier is not eligible for any preferential tariff programs. The remaining suppliers are a mixed bag, some having only GSP eligibility and some having that and CBERA. Most of the larger U.S. firms in the stuffed toy industry source from more than one of these countries, some from all seven.

Under TSUS item 737.30, stuffed toys are currently dutiable at a column 1 rate of 5.5 percent ad valorem, column 2 of 70 percent. Under TSUS item 737.40, filled toys are dutiable at a column 1 rate of 7 percent ad valorem, column 2 of 70 percent.

For the purposes of Customs classification, the term "animate" has traditionally included only animals or humanoid figures (other than dolls) that are predominanty earthly in nature. Nonearthly creatures, robots, machines, and vegetable or mineral objects vested with human or animal features are excluded, as are creatures that are hybrids of two or more earthly creatures.

The production of the subject articles was $86 million in 1980 and increased to 163.1 million in 1984. This includes the value of imported part incorporated in the toys. Production using imported skins increased by approximately 75 percent between 1983 and 1984.

Specific information concerning the domestic industry producing only the products covered by the legislation is not available. However, there were approximately 200 U.S. firms producing all types of dolls and stuffed toys in 1984. Employment in the doll and stuffed toy industry, which prior to 1982 had been declining, recovered somewhat in 1984, rising to about 7,800 employees, including about 6,600 production and related workers. The industry is concentrated in New York, New Jersey, California, and the New England states.

Nearly all domestic producers, including all the major firms, import to some extent. These activities range from the importation of skins to significant investment in foreign production facilities for supplying both U.S. and foreign markets. Although there is some production of complete stuffed toys in the United States, most domestic producers of the toys covered by the legislation rely on imported skins. Those toys that are entirely manufactured in the United States are either the very large toys or those toys sold as specialty items that do not usually compete in the "children's" toy market.

Imports of the subject articles increased from 38.7 million units in 1980 to 166.7 million units in 1984. As previously stated the top 3 importing countries were Korea (58 percent), Taiwan (27 percent) and China (6 percent). Imports under the GSP were 47.1 million units in 1984. CBERA imports were 600,000 imports in 1984.

U.S. exports of stuffed and filled toy figures of animate objects consist primarily of (1) unfinished goods intended for further processing and reexport to the United States and (2) high-priced specialty items that compete in other markets in the same manner that U.S. imports from developed countries compete in the U.S. market. As such, U.S. exports were extremely limited, not exceeding 7 percent of producers' shipments in any year of the period 1980–84, and usually far less than that.

Consumption increased from $145.4 million in 1980 to $456.5 million in 1984. Imports as a share of consumption (in value) rose from 43 percent in 1980 to 65 percent in 1984. If the import value is inflated to the first U.S. billing value the 1984 figure swells to 80 percent.

Assuming that imports from Korea and Taiwan remain ineligible for duty-free treatment under the GSP during 1986–90 and that China does not gain GSP eligibility during the period, the enactment of the legislation would result in an estimated customs revenue loss of $25 million to $30 million in 1986 and an estimated annual loss of $20 million to $25 million during 1987–90.

Section 836. Duty-Free Entry of Personal Effects and Equipment of Participants and Officials Involved in the 10th Pan American Games

Section 836 would add a new temporary provision to the Appendix to the TSUS to grant duty-free entry into the United States for the personal effects, equipment, and other articles of foreign participants coming to Indianapolis, Indiana in 1987 for the Tenth Pan American Games. Similar duty treatment would also be provided to articles entered by officials for the Games, accredited members of delegations, immediate family members of any of the above, and any servants to such persons. The duty suspension would be administered under the terms of regulations promulgated by the Secretary of the Treasury and would continue through September 30, 1987. The new tariff item, designated as Appendix item 915.10, would provide for retroactive duty-free treatment for articles entered after May 31, 1986, upon proper request filed with Customs.

The provision is similar to a previously enacted provision which granted temporary duty-free entry to articles brought to the United States for use during the Los Angeles Olympic games held in 1984. Specifically, proposed TSUS item 915.10 would utilize the same article description (other than the different reference to the title of the Games) as was employed in prior TSUS item 915.00, which expired on September 30, 1984. The duty suspension is conditional that the articles are required to be consumed, destroyed or exported and not to be sold commercially in the United States. The Secretary of the Treasury is empowered to issue regulations concerning the scope and operation of item 915.10.

With the duty suspension provision, persons eligible to use it would not be compelled to obtain a temporary importation bond for the amount of customs duties otherwise applicable, then wait for a duty refund following proof that the articles had been exported from the United States.

There would be no effect on revenue.

Section 837. Carding and Spinning Machines

This provision would amend the Tariff Schedule of the United States (TSUS) to suspend the existing column 1 rate of duty through December 31, 1990 on spinning, twisting, doubling, and other machines specially designed for wool. The column 2 rate of duty would remain unchanged. The provision would also cover machines used to prepare for spinning wool intended for specified applications. Machines for making combed wools (worsted) yarn would be excluded.

The subject machines are used in the preparation of wool and the manufacture of yarns.

Spinning machines are used to reduce the roving (soft strand of loosely assembled fibers made from sliver for spinning into yarn) to the required fineness, and to twist and then wind the yarn onto a cap, bobbin, or paper tube.

Doubling machines simply take two, three, four or more single strands of sliver (untwisted continuous brand of fibers resulting from the carding process) or yarn and wind them onto one cone.

The purpose of this operation is to increase the uniformity of the strand which is ultimately to be transformed into finished yarn.

Spinning, twisting, doubling, and other machines specially designed for wool are provided for in TSUS item 670.04. This provision includes all machines used to produce yarns from wool; however, the Customs National Import Specialist indicates that identifying those machines which are "specially designed" can be difficult. The column 1 rate of duty is 4.7 percent ad valorem and the column 2 rate is 40 percent. Imports are eligible for GSP and CBERA.

According to industry sources, between 30 and 40 domestic firms produce spinning, twisting, doubling or other machinery designed for producing yarn from wool, cotton, synthetics, or blends.

Estimated U.S. production of all spinning, twisting, doubling, or other machinery designed to prepare yarns (including those from wool) increased by 12.5 percent from $57.5 million in 1980 to $64.7 million in 1984. Since the majority of these machines are capable of processing wool, cotton, and synthetics, it is not possible to differentiate based on fiber type. Few of these machines are manufacured or designed solely to produce wool, according to industry officials.

The quantity of imports increased irregularly from 262 units valued at $398,000 in 1980 to 391 units valued at $2,151,000 in 1984.

In 1984, the principal sources of U.S. imports of these machines were West Germany (accounting for 37 percent of total imports), France (accounting for 36 percent of total imports), and Belgium (representing 22 percent of total imports).

U.S. exports of these machines averaged about 1,500 units per year during 1980–1984. (Exports of machinery based on type of yarn produced are unavailable.) Canada and Mexico were the principal markets for these exports.

During the period 1980–84, apparent U.S. consumption of all spinning, twisting, doubling, and other machines designed for preparing and producing yarn (including wool yarns) increased from $134.7 million in 1980 to $236.7 in 1984.

Based on 1984 import levels, annual revenue loss would average approximately $104,000 during 1987–88.

Section 838. Certain Bicycle Parts

The provision would affect the customs treatment of bicycle parts in two areas. First, it would continue the duty-free treatment of certain parts through December 31, 1990 and would provide for duty-free treatment retroactive to June 30, 1986, upon proper request filed with Customs. Some bicycle parts would be deleted from the enumeration of articles now afforded duty-free entry, while others would be added to that list. With the exception of caliper brakes, none of the parts which would be covered by the amended duty suspension provision are produced on a commercial scale in the United States. This legislation would also add two new temporary provisions to the Appendix to the TSUS to suspend the column 1 rate of duty for (1) bicycle tires and tubes, and rim strips of rubber or plastics under item 912.01 which is effective January 1, 1988 and (2) bicycle chains under item 912.06 through December 31, 1990. Second, the legislation would continue during the same time period the prohibition on the application of the Foreign-Trade Zones Act to bicycle component parts unless those parts are reexported, either as parts or as components of complete bicycles.

Most bicycle parts are made from steel, alloy metals, rubber, or plastics materials. U.S. bicycle manufacturers either produce parts in their plants or purchase from domestic or foreign sources the parts needed to manufacture bicycles. With one exception, certain parts (primarily those for multispeed lightweight bicycles) are not produced in the United States and currently enter duty-free under temporary TSUS item 912.05 an 912.10. Many of the imported parts are said to be a higher quality than similar U.S. parts; U.S. producers of bicycle components face significant direct price and quality competition for all of the parts they supply.

Most bicycle parts, when imported separately, are classified as "parts of bicycles" in TSUS item 732.30 through 732.42. Other components, however, are classified in accordance with general headnote 10(ij) under more specific (often *eo nomine*) provisions elsewhere in the TSUS. The column 1 rates of duty on the subject parts are currently suspended but absent suspension these rates range from approximately 5 percent AVE to 11 percent AVE. Some of the items are GSP eligible and all are eligible for CBERA.

Bicycle tires and tubes, and rim strips of rubber or plastics are classified in TSUS items 732.42, 772.48 and 772.57 at a column 1 duty rate of 10%, 5% and 15% ad valorem respectively. Bicycle chains are classified in item 652.13 at a column 1 duty rate of 6.6 percent ad valorem and in item 652.15 at a column 1 rate of 4.2 percent ad valorem. Column 2 rates are not affected by this legislation.

Two industries produce articles involved in the proposed legislation: the domestic industry manufacturing bicycle components and that producing bicycles. Manufacturers of bicycles also make certain basic parts, such as tubing for frames, handlebars, rims for wheels, and other parts requiring basic bending and pressing operations.

With the exception of caliper brakes, there are no U.S. firms known to be producing on a commercial scale any of the articles which would enter duty-free under this legislation. One firm, Dia-Compe, Inc. a wholly owned subsidiary of Yoshigai-Kikai Co., Ltd., Osaka, Japan, produces caliper brakes. However, all the caliper brakes produced by Dia-Compe are assembled from parts imported free of duty from its parent company. The only product which the firm produces is caliper brakes.

The bicycle component parts industry consists mainly of small businesses, the number of which is believed to have decreased below fifty in 1984; employment was estimated to be about 1,500 in that year.

In 1984, eight firms accounted for virtually all of the domestic output of bicycles. According to their estimates in recent annual reports, Huffy accounted for "in excess of 40 percent" and Murray-Ohio for about 36 percent of U.S. producers' shipments. In 1984, total employment in the bicycle industry amounted to an estimated 5,500 employees.

Imports of bicycles increased from 2.2 million units in 1980 to 4.7 million in 1984. On a quantity basis, Taiwan and Japan were the two principal suppliers of bicycles in 1984, providing the United States with 3.7 million units, or 78 percent, and 584,000 units, or 12 percent, respectively, of total imports. In 1984, U.S. imports of bicycles from sources assessed the column 2 duty rate amounted to 38,245 bicycles, valued at $927,647 Complete data on U.S. imports of bicycle component parts are not available; as a result of general headnote 10(ij), certain articles are classified in broad or residual TSUS items covering many other types of articles. Imports of those items for which data are available decreased from $208 million in 1980 to $204 million in 1984. The principal sources of such imports in 1984 were Japan, $88.7 million or 46 percent; Taiwan, $72.3 million, or 35 percent; Italy, $13.7 million, or 7 percent; and the Republic of Korea, $11.7 million, or 6 percent.

A substantial proportion of parts of bicycles provided for in various TSUS items in schedule 7, part 5, subpart C, entered free of duty under TSUS item 912.10 until its expiration on June 30, 1986. Complete separate data are not currently available on the volume of such duty-free imports in 1984. However, partially estimated data for such imports recorded $1.1 million under TSUS item 912.05 (generator lighting sets) and an estimated $60.0 million under item 912.10. In 1984, duty-free imports entering under item 912.10 accounted for 44 percent of total imports dutiable and duty-free, of all parts entered in subpart C, part 5, of schedule 7.

Data on U.S. exports of bicycle parts are available only for those parts of bicycle classified in the TSUS under schedule 7, part 5, subpart C of the TSUS, and for bicycle tires and tubes. Exports of these parts decreased from $14.5 million in 1980 to $12.0 million in 1984. The articles covered in the proposed duty suspension are not exported because they are not produced in the U.S. with the exception of Dia-Compe caliper brakes which are not exported.

Exports of bicycles decreased from 92,000 units in 1980 to 31,000 units in 1984. The data illustrate that exports of bicycles have not been important for the U.S. bicycle industry. Thus, the continued restriction of FTZ operations to the manufacture or reexport of finished bicycles or parts would appear for practical purposes to preclude the use of zones for bicycle production or assembly.

Consumption of parts increased from $226.9 million dollars on 1980 to $236.2 million dollars in 1984. Consumption of bicycles increased from $680.4 million dollars in 1980 to $822.4 million in 1984.

Based on 1984 data, apparent U.S. consumption of caliper brakes was about 3.3 million brakes, 2.3 million of which were supplied by imports. Consumption of bicycle tires and tubes decreased from 11.8 million units in 1980 to 9.5 million units in 1983.

Using several assumptions it is estimated the extension of the FTZ provision would result in a savings of $1.5 million.

The extension of the duty-free status of certain bicycle parts would result in a revenue loss of $5.8 million annually.

Section 839. 1-(3-Sulfopropyl) Pyridinium Hydroxide

This section would suspend the column 1 rate of duty on imported 1-(3-sulfopropyl) pyridinium hydroxide, classified in item 406.42 of the Tariff Schedules of the United States (TSUS). It would amend subpart B of part 1 of the Appendix to the TSUS to add a new item 906.46, with duty-free entry for articles from column 1 countries. The suspension would commence 15 days after the date of enactment and end on Dec. 31, 1990. The column 2 rate of duty would remain unchanged.

The chemical, 1-(3-sulfopropyl) pyridinium hydroxide, is a liquid with a density of approximately ten pounds per gallon. It is synthesized from propane sultone and pyridine. The subject chemical is used exclusively in a proprietary formulation for copper and nickel electroplating baths.

At the present time, this chemical is classified in TSUS item 406.42 (other heterocyclic compounds and their derivatives) with a column 1 rate of duty of 13.5 percent ad valorem. The column 2 rate of duty is seven cents per pound plus 52 percent ad valorem. The product is not eligible for duty-free entry under the Generalized System of Preferences (GSP); however, it is eligible for duty-free treatment under Caribbean Basin Economic Recovery Act (CBERA) and under the United States-Israel Free Trade Area Implementation Act of 1985 as indicated in the Special column. No least developed developing countries rate of duty is provided.

Industry sources and ITC records show that there were no U.S. producers of 1-(3-sulfopropyl) pyridinium hydroxide in the past five years. The Shell Chemical Company, the only U.S. producer of propane sultone, one of the raw materials used to synthesize 1-(3-sulfopropyl) pyridinium hydroxide, stopped production of propane sultone due to the associated industrial hazards.

As the subject chemical is classified in a residual (basket) TSUS item, the separate quantity or value of imports during 1980–85 are not available. Industry sources estimate that during this period a total of approximately 250,000 pounds of the subject chemical, valued at about $625,000, were imported into the United States. It is estimated that imports can be expected to grow by approximately ten percent each year during 1986–88.

According to industry sources, there are no U.S. exports of the subject chemical.

Domestic consumption during 1980–85 was essentially the same as imports.

Based on estimates from industry sources, the expected customs revenue losses are $19,000 in 1987 and $20,000 in 1988.

Section 840. D-6-Methoxy-a-Methyl-2-Naphthaleneacetic Acid and Its Sodium Salt

The proposed legislation would establish a new item in the Appendix to the Tariff Schedules of the United States (TSUS) in order to afford temporary duty-free treatment to imports of d-6-methoxy-a-methyl-2-naphthaleneacetic acid from countries entitled to column 1 rates of duty. The column 2 rate of duty would not be affected by the bill, and the suspension of the column 1 of duty would continue through December 31, 1990.

The subject products are pharmaceutical intermediates which are covered by U.S. and foreign patents and are utilized in the manufacture of anti-inflammatory drugs used to treat arthritis. According to the proponent of the legislation—the owner of the patents—basic materials are exported from the United States to the Bahamas and to Ireland, which grant duty-free entry thereto on the basis that there is no domestic supplier of the materials (because of the patents). In those two countries, the basic materials are manufactured into the subject intermediates, which are then shipped to Puerto Rico for further processing and packaging; the intermediates contain both U.S. and foreign component chemical products. It is believed that no substitute for the finished drugs exist for those persons for whom it is prescribed. Because of the patents, no U.S.-produced alternative source for the subject intermediates exists. The acid, known as naproxen, has the chemical formula C14H1403 and the sodium salt has the formula C14 H13Na03.

These products are classified in item 412.22 of the TSUS, which covers nonenumerated analgesics, antipyretics, and nonhormonal anti-inflammatory agents. These articles are dutiable at a column 1 rate of 6.8 percent ad valorem and a column 2 rate of seven cents per pound plus 47.5 percent ad valorem. Imports from beneficiary countries under the GSP (except for the Bahamas) and the Caribbean Basin Economic Recovery Act (CBERA) are eligible for duty-free entry, as are products of Israel.

There is no known domestic production of the subject products. Syntex Corporation, the owner of the patents on these products, manufactures some of the raw materials for the subject products at their facility in Boulder, Colorado.

Because there is only one firm involved in trading these intermediates, such data cannot be included since they would reveal confidential business information.

It is believed that the maximum customs revenue loss annually during the period of the duty suspension would range from $150,000 to $325,000, varying with the quantities of the subject products imported and with the amount of drawback of customs duties claimed by the U.S. importer-exporter.

Section 841. Certain Pestisides

The first provision of this section would suspend the column 1 rates of duty for dinocap and mixtures of dinocap with application adjuvants classified under items 408.16 and 408.38 of the Tariff Schedules of the United States (TSUS) until Dec. 31, 1990. The bill would amend subpart B of part 1 of the Appendix to the TSUS to add items 907.26 and 907.29 with free entry for articles from countries entitled to MFN treatment commencing on or after the 15th day of enactment and ending on or before Dec. 31, 1990. The column 2 rate of duty would remain unchanged.

Dinocap is a fungicide-miticide used to control powdery mildew and mites, primarily on apples and other tree crops, vine crops, curcubits, and onamentals. It is imported as both the technical grade and as a finished product containing application adjuvants. There are U.S.-produced fungicides and other U.S.produced miticides; however, there are few, if agony, pesticides that are effective in both of these areas. In addition, use of dinocap-resistant strains as has occurred with other fungicides and miticides, according to statements from the producer.

Dinocap is presently classified under item 408.16, fungicides, not artificially mixed. Articles entered under this item number are presently dutiable at a column 1 rate of 11.1 percent ad valorem and a column 2 rate of 7 cents per pound plus 40 percent ad valorem.

Mixtures of dinocap with application adjuvants are currently classified under item 408.38, other pesticides. The column 1 rate and LDDC rate are currently 0.8 cents per pound plus 9.7 percent ad valorem, while the column 2 rate is 7 cents per pound plus 31 percent ad valorem. The column 1 rate was not subject to annual staged reductions as a result of the Trade Agreements Act of 1979. Prior to the enactment of this Act, these products were classified in item 405.15, with a column 1 rate of 1.7 cents per pound plus 12.5 percent ad valorem. Articles classified in either item 408.16 or item 408.38 are eligible for duty-free treatment under the CBERA, the GSP, and the United States-Israel Free Trade Area Implementation Act of 1985.

During 1981–84, dinocap and its preparations were produced in the United States by Rohm and Haas, at their plant in Philadelphia, Pennsylvania. In 1985, Rohm and Haas stopped production of dinocap, but continued to manufacture the preparations using imported material. The data, however, is not available because to do so would reveal business confidential material.

According to an industry source, U.S. imports of these products in 1985 amounted to approximately 276,000 pounds, valued at $1.2 million. All of these imports came from Italy and were shipped to Rohm and Haas. There were no imports from any other sources. The Commission staff was not able to identify any imports of these products during 1981-84 as these products were classified in "basket" TSUS item numbers.

Exact export data for these products are not available as they are classified in residual Schedule B item numbers.

Data for domestic consumption of these products are not available; however, an industry source indicated that domestic consumption in 1985 was nearly the same as imports.

Based on data provided by an industry source, the estimated annual revenue loss during 1986–90 would be approximately $10,000.

The second portion of section 841 would suspend the column 1 (MFN) duty on mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol) and application adjuvants through Dec. 31, 1990. The column 2 (statutory) duty is not affected by the bill. The technical grade (active ingredient) dicofol already is subject to a duty suspension which expires Dec. 31, 1990. Continuation of that suspension is covered by separate legislation.

Mixtures of dicofol and application adjuvants currently enter the United States under Tariff Schedules of the United States (TSUS) item 408.36 at a MFN duty of 0.8 cents per pound plus 9.7 percent ad valorem. Imports under TSUS item 408.36 are eligible for duty-free treatment under the U.S. Generalized System of Preferences. This provision would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.27 with duty-free entry for articles entitled to MFN treatment commencing on or after the fifteenth day after date of enactment and ending on or before December 31, 1990. The column 2 rate of duty would remain unchanged.

Dicofol is not produced in the United States. It is imported both as a technical grade (active ingredient) and as mixtures of the technical grade and application adjuvants. Dicofol is a chlorinated hydrocarbon developed specifically as a broad spectrum miticide. There are no other uses. After entry into the United States, the technical grade and the mixtures are further processed or formulated to produce a variety of miticide products.

Because the subject products enter in a basket category, determination of the revenue effect is not possible. It is estimated that revenue foregone would be approximately $85,000 per year for the period 1986 through 1990.

The third portion of section 841 would suspend the column 1 (MFN) duty on mixtures of mancozeb, dinocap, stabilizer and application adjuvants through Dec. 31, 1990. Currently, imports of mancozeb/dinocap mixtures would enter under item 408.38 at an MFN duty of 0.8 cents per pound plus 9.7 percent ad valorem. Imports under TSUS item 408.38 are eligible for duty-free treatment under the U.S. Generalized System of Preferences. This provision would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.28 with duty-free entry for articles entitled to MFN treatment commencing on or after the fifteenth day after date of enactment and ending on or before December 31, 1990. The column 2 rate of duty would remain unchanged.

There are no U.S. manufacturers of mancozeb/dinocap. These mixtures are produced in Europe, under patents which expire in 1991, by subsidiaries of a U.S. firm. There is no single product manufactured or sold in the United States that is a direct replacement for the mancozeb/dinocap mixtures marketed domestically as Dikar. There are no commercial end used for mancozeb/dinocap other than as an agricultural fungicide-miticide. Several products control one or more pests controlled by Dikar but no single product has as broad a control spectrum of fungi and mites.

The revenue impact is undetermined because the subject products enter in a basket category. It is estimated that revenue foregone would be approximately $300,000 per year for the period 1987 through 1990.

Section 842. Cholestyramine Resin USP

Section 842 would temporarily suspend the column 1 rate of duty for cross-linked polyvinylbenzyltrimethylammonium chloride (cholestyramine resin USP) classified in item 412.70 of the Tariff Schedules of the United States (TSUS). The bill would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.30 with free entry for articles from countries entitle to MFN treatment commencing on or after the 15th day of enactment and ending on or before December 31, 1990. The column 2 rate of duty would remain unchanged.

Cholestyramine resin is a synthetic, strongly basic, anion-exchange resin consisting of a copolymer of styrene and divinylbenzene with quaternary ammonium groups. According to an industry source, the resin is available in both the USP grade and "regular" grade. The latter has a water content of 70 percent, compared with 12 percent for the USP grade. The resin is used medicinally as a cholesterol lowering agent and is marketed domestically by Mead Johnson under the brand name "Questran." The orally ingested resin, a white to buff-colored, fine hygroscopic powder, absorbs bile acids in the intestine, without being absorbed from the digestive tract. As bile acids are removed from the enterohepatic circulation, increased oxidation of cholesterol to bile acids occurs.

Several patents are presently in effect that relate to the product as well as its applications. These patents are effective into the next century, according to an industry source. As of May 14, 1985, however, the patent on method-of-use expired. This was considered the main patent on the product since a patent on the polymer itself expired several years ago.

There are no U.S. manufacturers of finely ground, polyvinylbenzltrimethylammonium chloride, anion-exchange resins approved by the Food and Drug Administration (FDA) for use as antihyperlipoproteinemics. It therefore appears that a tariff on this product is unnecessary.

Cholestyramine resin USP is presently classified under item 412.70. The duty rate for column 1 countries and for least developed developing countries (LDDC's) is 6.9 percent ad valorem. The column 2 duty rate is 7 cents per pound plus 45 percent ad valorem. The item number has no concession for a staged reduction in duty rates. The resin is not eligible for duty-free treatment under the GSP; however, it is eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act (CBERA) and under the United States-Israel Free Trade Area Implementation Act of 1985 indicated in the special column.

The market for hypolipidemics, agents used to reduced cholesterol and lipid levels in the blood, was valued at $60 million in 1984, an increase of 20 percent from 1983. Two of the hypolipidemics are anion-exchange resins. These resins are commonly called bile-acid sequestrants. One is cholestyramine resin USP and the other is colestipol hydrochloride, marketed under the brand name "Colestid Granules." The latter, although identical in end use to cholestyramine resin, has a different polymer structure. Of the approximately 2.4 million prescriptions for hypolipidemics written in 1984, "Questran" and "Colestid" accounted for 15 percent and 1 percent, respectively. "Questran" is expected to account for 25 percent of the projected $300 million market for hypolipidemics in 1990.

There is no significant medical difference between the two anion-exchange resin products. The preference in prescriptions was attributed to product loyalty, the length of time the product has been on the market, and the patient's tolerance of either product. Price is not considered a significant factor.

As the anion-exchange resin is classified in a residual (basket) TSUS item, the quantity or value of imports are not available. According to an industry source, however, there were no imports of this product prior to 1985. Approximately 250,000 pounds were imported in 1985, valued at $1–2 million. The industry source stated that projected total imports for 1986 will amount to 400,000–500,000 pounds, valued at $2–4 million. During 1987–90, imports are expected to amount to 550,000 pounds per year, valued at approximately $2–4 million per year. The current source of these imports is Italy, although the product is also available from France.

Data for domestic consumption are not available; however, industry sources indicate that domestic consumption in 1985 was estimated to amount to between 250,000 and 500,000 pounds, valued at $1–3 million.

Based on estimates from industry sources, annual revenue losses are expected to be approximatly $190,000.

Section 843. 3-Amino-3-Methyl-1-Butyne

Section 843 would suspend the column 1 (MFN) duty on 3-amino-3-methyl-1-butyne through December 31, 1990. The column 2 duty is not affected by the bill. This chemical intermediate presently enters the United States under Tariff Schedules of the United States (TSUS) item 425.52 at a MFN duty of 7.9 percent ad valorem. Imports under this item are eligible for duty-free treatment under the U.S. Generalized System of Preferences.

There is no domestic production of this intermediate, and no directly competing product. 3-amino-3-methyl-1-butyne is employed as a chemical intermediate in the manufacture of pronamide, a herbicide used to control grass and weeds for selected crops. Pronomide is manufactured by a single U.S. firm which imports the intermediate from subsidiaries abroad.

The revenue impact is undetermined because the subject chemical enters in a basket category. It is estimated that revenue foregone would be approximately $50,000 per year for the period 1987 through 1990.

Section 844. Maneb, Zineb, Mancozeb, and Metiram

This section would suspend temporarily the column 1 rate of duty for mixtures of maneb, zineb, mancozeb, and metiram, under item 432.15 of the Tariff Schedules of the United States (TSUS). The bill would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.60 with free entry for articles from countries entitled to MFN treatment commencing on or after the 15th day after the date of enactment and ending on or before Dec. 31, 1990. The column 2 rate of duty would remain unchanged.

The products covered include derivatives of ethylenebisdithiocarbamate (EBDC) registered for use as agricultural fungicides. These mixtures consist of active ingredients, related reaction products, and application adjuvants such as suspension agents, dispersants, inert liquid and/or solid diluents, thickeners, defoamers, solvents, stabilizers, colorants, water, and antifreeze. EBDC fungicides are used to control a wide spectrum of diseases on most agronomic crops including vegetables, fruits, vine crops, field crops, ornamentals, nursery stock, and seed. There are no commercial end uses for these products other than as agricultural fungicides. Currently, there are a number of other fungicides produced in the United States; however, EBDC-based fungicides are usually the most cost-effective, broad-spectrum fungicides available to U.S. farmers. Target fungi have not developed resistance to these fungicides as has been the case with some newer systemic fungicides.

Mixtures of maneb, zineb, mancozeb, and metiram, are currently classified under item 432.15, mixtures of pesticides not specially provided for. Articles entered under this item number are presently dutiable at a column 1 rate of 3.7 percent ad valorem, but not less than the highest rate applicable to any component material, and a column 2 rate of 25 percent ad valorem, but not less than the highest rate applicable to any component material.

Articles classified in item 432.15 are eligible for duty-free treatment under the CBERA, the GSP, and the United States-Israel Free Trade Area Implementation Act of 1985.

Only one U.S. firm, Rohm and Haas Company in Philadelphia, Pennsylvania, produced the specified EBDC derivatives within the United States during the past five years. Production of these chemicals in the United States by Rohm and Haas was discontinued in 1985.

Data on U.S. production of these products are not available because to do so would reveal business confidential material.

Exact import data on these products are not available as they are classified in a "basket" item number. However, since Rohm and Haas was the only U.S. importer of these products during 1980–85, their import data reflect trade in these products. A company spokesman said that imports were 1.6 million pounds in 1981, 2.6 million pounds in 1984, and 6.7 million pounds in 1985. Rohm and Haas did not import these products during 1982 and 1983.

U.S. export data for these products are not available as they are classified in a residual (basket) schedule B item number. However, according to Rohm and Haas, exports of these products ranged from approximately 2.4 million pounds in 1981 to 2.7 million pounds in 1985. There were no exports of these products in 1980.

Data on the domestic consumption of these products are not available.

Based on estimates from industry sources, $1,000,000 is the estimated annual revenue losses during 1987–89.

Section 845. Nicotine Resins

The Trade and Tariff Act of 1984 provided for a temporary duty suspension for nicotine resin complex in the form of chewing gum pieces. The intent of the provision was to allow duty-free entry of a trademarked substance known as *Nicorette,* imported by Merrell Dow Pharmaceuticals, Inc. Subsequent classification interpretations by the Customs Service since the duty suspension was enacted have negated the intent to provide duty-free treatment for *Nicorette.*

The first part of this amendment clarifies the definition of nicotine resin complex so as to include "measured doses in chewing gum form (provided for in item 438.02, part 3B, Schedule 4). Thus, *Nicorette* would be covered by this duty-free classification as originally intended by Congress. This amendment has been reviewed by the Customs Service and International Trade Commission, who have reported that there are no problems with this language. It is basically a technical change.

The second part of this amendment extends the current duty suspension through December 31, 1990 and applies to articles entered after December 31, 1987. The patent on this item applies through 1992, so the extension of this suspension would not negatively impact any manufacturer.

This provision would be made retroactive to November 14, 1984, upon proper application therefor with the U.S. Customs Service.

Section 846. Hosiery Knitting Machines and Needles

This section would suspend column 1 duty through December 31, 1990 for hosiery knitting machines, single cylinder fine gauge, and all double cylinder knitting machines (provided for in items 670.16 and 670.18) under new item 912.29.

In addition, the proposed legislation would provide for a retroactivity provision on the expired temporary duty suspension which existed under item 912.08 on imports from column 1 countries of single cylinder fine gauge hosiery knitting machines classified under item 670.16 and of double cylinder jacquard hosiery knitting machines for knitting women's hosiery classified under item 670.18. It would provide for duty-free treatment retroactive to September 30, 1985 upon proper request filed with Customs.

Knitting is the process of producing fabric by forming loops of yarn and pulling each newly formed loop through one that has already been made. These operations are performed by hooked needles.

Circular and noncircular knitting machines are used to make hosiery, although the use of the latter type has virtually ceased in the United States.

Circular hosiery knitting machines may be subdivided into two major categories—namely, single cylinder and double cylinder. In turn, single cylinder machines may be classified as either fine or coarse gauge machines. Currently, only single cylinder coarse gauge hosiery knitting machines are manufactured in the United States.

Double cylinder hosiery knitting machines are used to manufacture half-hose for men, women, and children. These machines are fitted with a distinctive double-headed latch needle which is transferred to one or the other of the superimposed cylinders as required, producing a more intricate pattern (including jacquard or three-color combinations) than single cylinder machines.

Single cylinder fine gauge hosiery knitting machines have a column 1 duty of 4.2 percent ad valorem and double cylinder jacquard hosiery machines a 5.1 percent duty. Both have a column 2 rate of 40 percent ad valorem and are eligible for GSP and CBERA.

There are no U.S. producers of the hosiery knitting machines covered by this legislation.

Separate data for different types of circular hosiery knitting and double cylinder jacquard machines are not available. However, imports of the TSUS item covering all circular knitting machines were almost totally from Italy (90%). Canada was the sole source of the TSUS item covering the latter category.

The effect on revenue is not available because volumes of imports are not specifically known. Estimated revenue loss for these items in 1986 would be $980,000.

In addition to the tariff changes for knitting machines, section 846 would suspend the column 1 duty through December 31, 1990, for needles for knitting machines provided for in TSUS items 670.58 and 670.62 under new item 912.28.

In addition, this provision would provide for a retroactivity provision on the expired temporary duty suspension which existed for double headed latch needles under TSUS item 912.09. It would provide for duty-free treatment retroactive to July 1, 1985 upon proper request filed with Customs.

The Department of Commerce and the International Trade Commission have investigated this change and found that there is no longer domestic production of the needles covered in items 670.58 or 670.62.

Latch needles for knitting machines are classified in item 670.58 and are dutiable at a column 1 rate of 10 percent ad valorem and a column 2 rate of $2 per 1,000 plus 60 percent ad valorem. All other needles for knitting machines (except springbeard needles) are classified in TSUS item 670.62 and are dutiable at a column 1 rate of 23 cents per thousand plus 8.2 percent ad valorem and a column 2 rate of $1.15 per 1,000 plus 40 percent ad valorem. Latch needles are eligible for GSP. All subject needles are eligible for CBERA.

Double-headed latch needles, or "links" needles, are used in the manufacture of machine-knitted fabric. These needles each consist of a shank with a hook at each end.

The manufacturing process for needles generally includes a series of up to thirty hand and machine operations, including pressing, swaging, tempering, polishing, and straightening. The duty free treatment is sought as there is currently no domestic production.

There has been no U.S. production of latch needles since 1980, when the Torrington Co. divested itself of its needle operations.

Imports increased from 128 million units in 1980 to 161 million units in 1984. West Germany and Japan accounted for 69 percent of U.S. imports. Imports for double headed latch needles totalled $2.7 million in 1984.

The average annual customs revenue loss that would result from the continuation of the duty suspension as to imported double-headed latch needles would be approximately $2.2 million. This estimate is based on 1984 import levels and on the staged reductions of the tariff rates schedules for 1985–90.

Section 847. Silk Yarn

This section would suspend the column 1 rate of duty on certain types of silk yarn.

This provision would affect colored, plied 100 percent silk yarn spun wholly from noncontinuous fibers, entering under TSUS item 308.51.

Most of the continuous filament yarn produced in this country or imported is used in the production of woven silk fabric, much of which is used for the manufacture of silk neckties.

The purpose of this provision is to assist U.S. manufacturers of silk fabric to compete with imports of silk fabric from Italy and other European countries by removing the tariff on the silk yarn used in producing the fabric.

The column 1 and column 2 rates of duty applicable to imports of the subject yarn are 5 percent ad valorem and 50 percent ad valorem, respectively. Yarn of 100 percent silk is not subject to restraints under the MFA. It enters duty-free from Israel, and is eligible for duty-free entry under the GSP and the CBERA.

There are no domestic companies known to be producing 100 percent spun silk yarn. There are believed to be 7 companies producing continuous filament silk yarn. Industry sources estimate that 1985 production of the latter product amounted to 430,000 pounds, valued at $8.4 million.

Imports of silk yarn under TSUS item 308.51 jumped from $209,000 in 1981 to $1.4 million in 1983, but then declined to $740,000 by 1985.

Specific data for exports of the silk yarns covered by this provision are unavailable; however, industry sources estimate that exports of the subject silk yarn accounted for approximately $2 million in 1985.

It is estimated that annual domestic consumption is about $10 million.

The estimated revenue losses would be approximately $37,000 per year.

Section 848. 3-Ethylamino-P-Cresol

This section would suspend through December 31, 1990, the column 1 rate of duty for 3-ethylamino-p-cresol classified under item 404.96 of the Tariff Schedules of the United States (TSUS).

The chemical 3-ethylamino-p-cresol is an intermediate chemical used in the production of certain dyes such as basic red 1. Minor uses for the subject chemical include the manufacture of certain fluorescent brightening agents used in paper processing.

The purpose of the duty suspension is to permit domestic production of basic red 1 to be price competitive with the imported product.

3-Ethylamino-p-cresol is classified under TSUS item 404.96, where it is one of eight chemicals listed by name. The column 1 rate of duty is 7.8 percent ad valorem, and the column 2 rate of duty is 7 cents per pound plus 65 percent ad valorem. The chemical is eligible for duty-free treatment under the CBERA, but is not eligible for GSP preferences.

There is no U.S. production or exports of the chemical.

Separate import data on the chemical are not available. However, industry sources estimate that approximately 150,000 pounds valued at $720,000 were imported into the United States in 1985. This accounts for all U.S. consumption in that year.

Based on estimates from industry sources, expected revenue losses would be about $60,000 per year.

Section 849. Chlor Amino Base

This section would suspend through December 31, 1990, the column 1 rate of duty for 4-chloro-2,5-dimethoxyaniline (also known as chlor amino base).

The chemical, 4-chloro-2,5-dimethoxyaniline, is a benzenoid intermediate chemical used to manufacture Pigment Yellow 83. Because of the unique chemical properties of the subject chemical, no other product can be substituted in the production of Pigment Yellow 83.

The suspension of duty will act to lower the overall cost of producing textiles in the United States since the chemical is used as a precursor in the production of printing ink and dyes for textiles.

Chlor amino base is classified under TSUS item 405.01 with a column 1 rate of duty of 6.1 percent ad valorem. The column 2 rate of duty is 7 cents per pound plus 41.5 percent ad valorem. The product is not eligible for duty-free treatment under the GSP; however, it is eligible for duty-free treatment under CBERA and under the United States-Israel Free Trade Area Implementation Act of 1985.

Only one domestic manufacturer, Pfister Chemical, Inc., produces 4-chloro-2,5-dimethoxyaniline. Production data cannot be included because their publication would reveal confidential business material.

Industry sources estimate that imports of chlor amino base in 1985 were 254,247 pounds, valued at $1.2 million.

Separate U.S. export and consumption data are not available.

Estimated revenue losses are expected to average about $80,000 per year.

Sections 850 (2,2-Bis(4-Cyanatophenyl)), 852 (Phenylmethylaminopyrazole), 855 (Benzethonium Chloride), 856 (Molononitrile), 858 (Metaldehyde), and 861 (Paraldehyde)

These sections would provide temporary duty-free treatment for the following chemicals: 2,2-bis-(4-cyanatophenyl), aminomethylphenylpyrazole, benzethonium chloride, malononitrile, metaldehyde, and paraldehyde USP, classified in TSUS items 405.82, 406.36, 408.32, 425.42, 427.58, and 439.50, respectively.

All of the chemicals affected by this provision are produced synthetically from petroleum products. These chemicals have a variety of primary uses.

The chemical 2,2-bis-(4-cyanatophenyl) is used exclusively in the production of a specialty resin which is, in turn, used to manufacture printed circuit boards.

U.S. Pharmaceutical (U.S.P.) grade paraldehyde, also known as paracetaldehyde, is a rapidly acting hypnotic which has been in use for over a century, primarily to treat delirium tremens.

Benzethonium chloride is a cationic surface active agent used as a germicide.

Malononitrile is usually considered a specialty chemical and used in laboratory or pilot plant organic syntheses.

Metaldehyde is a crystalline solid chiefly used in the western United States to protect vineyards from destruction by snails and slugs.

The column 1 duty rates on these chemicals range from duty-free (malononitrile) to 13.5 percent ad valorem (2,2-bis-(4-cyantophenyl)). Malononitrile, metaldehyde, and paraldehyde USP are eligible for duty-free treatment under the GSP, the CBERA, and the United States-Israel Free Trade Area Implementation Act of 1985. Imports of benzethonium chloride from Israel are currently subject to annual staged reductions in duty until January 1989, when they will be eligible for duty-free treatment. The current rate for these imports from Israel is 10.7 percent ad valorem.

There was no domestic production of any of the subject chemicals during 1981–85.

Imports of malononitrile during 1981–85 fell from $1.9 million in 1981 to $157,000 in 1982, and reached $848,000 in 1985. As industry source has estimated the value of 1985 imports of the other chemicals as shown in the following tabulation.

Chemical	*Value*
Aminomethylphenylpyrazole	$100-200,000
Benzethonium chloride	500-600,000
2,2-bis-(4-Cyanatophenyl)	50-100,000
Metaldehyde	1,000,000
Paraldehyde USP	20-30,000

U.S. export data for these chemicals are not available. Apparent domestic consumption during 1981–85 paralleled imports.

Expected annual revenue losses for 1987 are as follows:

Chemical	*Estimated Loss ($1,000)*
Aminomethylphenylpyrazole	6.7-13
Benzethonium chloride	55-66
2,2-bis-(4-Cyanatophenyl)	7-14
Malononitrile	5
Metaldehyde	60
Paraldehyde, USP	0.75-1

Section 851. Nitro Sulfon B

This section would suspend through December 31, 1990, the column 1 rate of duty for 2-[(3-Nitrophenyl)sulfonyl] ethanol (also called nitro sulfon B).

Nitro sulfon B is a benzenoid intermediate chemical used in the production of certain dyes known as fiber-reactive dyes. These dyes are used in the domestic textile industry to dye principally cotton fabrics.

The suspension of duty will act to lower the overall cost of producing textiles in the United States since the chemical is used as a precursor in the production of dyes for textiles.

Nitro sulfon B is classified under TSUS item 406.00 (Organosulfur compounds) with a column 1 rate of duty of 6.7 percent ad valorem. The column 2 rate of duty is 7 cents per pound plus 40.5 percent ad valorem. The product is not eligible for duty-free treatment under the GSP; however, it is eligible for duty-free treatment under CBERA and under the United States-Israel Free Trade Area Implementation Act of 1985.

During 1981–85, there was no domestic production of nitro sulfon B.

Industry sources estimate that in 1985 imports of nitro sulfon B were 84,454 pounds, valued at $384,266.

During 1981–85, domestic consumption was essentially the same as imports.

Based on estimates from industry sources, expected revenue losses during 1987–90 will be $88,000 to $96,000 per year.

Section 853. 1-(4-(1,1-Dimethylethyl)Phenyl)-4-(Hydroxydiphenylmethyl-1-Piperidinyl)-1-Butanone

This section would suspend through December 31, 1990 the column 1 rate of duty on imports 1-(4-(1,1-dimethylethyl)phenyl)-4-(hydroxydiphenylmethyl-1-piperidinyl)-1-butanone (also known as terfenadone) classified in TSUS item 406.42. The column 2 rate of duty would remain unchanged.

Terfenadone is a patented intermediate chemical used in the manufacture of terfenadine, a nonsedating antihistamine. The latter chemical is a patented prescription drug sold under the trademark Seldane by Merrell Dow Pharmaceuticals, Inc.

The temporary suspension of duty would reduce the cost of importing terfenadone, thereby allowing increased utilization of existing domestic manufacturing facilities producing terfenadone and Seldane and providing new jobs at Merrell Dow's facilities in Cincinnati, Ohio. Merrell Dow intends to export approximately one-third of the terfenadine manufactured from the imported terfenadone over the next 3 years.

Terfenadone is classified in TSUS item 406.42 (other heterocyclic compounds and their derivatives) with a column 1 rate of 13.5 percent ad valorem. The column 2 rate of duty is 7 cents per pound plus 52 percent ad valorem. Imports of terfenadone are not eligible for duty-free treatment under the GSP; however, they are eligible for duty-free treatment under CBERA and under the United States-Israel Free Trade Area Implementation Act of 1985.

There was no U.S. production of terfenadone in the past five years. Terfenadone is currently under U.S. patent to Dow Chemical Company, the only U.S. importer of this product.

Separate import data are not available for terfenadone, but industry sources estimate that 1985 imports amounted to approximately 24,000 pounds, valued at about $3 million.

According to industry sources, there are no U.S. exports of terfenadone and that domestic consumption during 1981-85 was essentially the same as imports.

Based on industry trade estimates, expected revenue losses would amount to $729,000 in 1987, and $1.46 million in subsequent years.

Section 854. Fluazifop-P-Butyl

This section suspends, through December 31, 1990, the column 1 rate of duty on a chemical commonly known as fluazifopp-butyl.

Also called Butyl (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]-phenoxyl] propanoate, this chemical is produced synthetically by a series of proprietary chemical reactions using benzenoid chemicals as starting materials. It is used in various herbicide formulations to control grassy weeds.

According to industry sources, fluazifop-p-butyl is currently produced solely in England; the concentrate is imported into the United States and formulated for commercial sale. Suspending import duties on this herbicide could lower the cost of the finished product to consumers. Further, because this herbicide is used primarily in cotton and soybean farming, a suspension of duties could reduce the U.S. farmers' costs and make them more competitive in the world market for soybeans.

Fluazifop-p-butyl is currently classified in TSUS item 408.23, with column 1 rate of duty of 13.5 percent ad valorem and a column 2 duty rate of 7 cents per pound plus 48.5 percent ad valorem. Imports of this herbicide are eligible for duty-free entry under the GSP, CBERA, and the U.S.-Israel Free Trade Agreement.

Fluazifop-p-butyl is not produced in or exported from the United States.

Annual imports of this herbicide are estimated to be about 2.0 million pounds, valued at about $28.0 million.

Apparent U.S. consumption is essentially determined by the level of imports.

The estimated revenue losses would amount to about $1 million per year.

Section 857. Sethoxydim

This section would suspend the column 1 duty rate on mixtures of sethoxydim through December 31, 1990.

Sethoxydim, more specifically referred to as 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, is an unstable oily liquid produced by a series of proprietary chemical reactions using nonbenzenoid starting materials. In commercial terms, sethoxydim is a formulated chemical product typically distributed in various forms, such as dust or concentrate, for application in no-till agricultural control of grassy weeds among alfalfa, cotton, peanuts, and some other types of vegetable crops.

Imports of unmixed sethoxydim would enter under TSUS item 425.52. However, sethoxydim is unstable and generally imported as a 50 percent solution in xylene or in other benzenoid solvents. The xylene solution is classifiable in TSUS item 430.20, with a column 1 duty rate of 3.7 percent ad valorem, but not less than the highest rate applicable to any component compound (in this case, the highest component rate is that for sethoxydim, or 7.9 percent ad valorem). Other benzenoid solutions would enter under TSUS item 407.19, with a column 1 rate of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. Both types of solution are eligible for duty-free treatment under the CBERA and for preferential treatment under the U.S.-Israel Free Trade Agreement. Only the later is eligible for GSP treatment.

Sethoxydim is not produced in the United States. Its method of manufacture is considered highly proprietary, and it is not likely to be licensed for production elsewhere.

Separate import data for sethoxydim are not available. Annual imports of sethoxydim are estimated to have remained at a level of about 2.0 million pounds, valued at about $28.0 million, since 1983, the first year in which this chemical was entered. The only known source of imports of this chemical in 1985 was West Germany.

The estimated annual loss of customs revenues would amount to approximately $2.2 million during the proposed suspension.

Section 859. Mixtures of Cross-Linked Sodium Polyacrylate Polymers

This section would suspend the column 1 rate of duty for certain mixtures of cross-linked sodium polyacrylate polymers through October 31, 1987, and provide for duty-free treatment retroactive to July 1, 1985, upon proper request filed with Customs.

Sodium polyacrylate polymers are colorless, odorless powders which are used principally to absorb large amounts of liquids or as additives to water-based mixtures to form flocculants. Additional properties associated with polyacrylate polymers are increased viscosities of water-based mixtures with limited lubricity. There are many special varieties and proprietary formulations used in many different industries, including boiler treatment compounds, water purification, and in drilling muds. There are few real differences between polyacrylate polymers used in the various industries, although some manufacturers claim proprietary features which make their products unique.

Sodium polyacrylate polymer mixtures are provided for in TSUS item 430.20, with a column 1 rate of 3.7 percent ad valorem, but not less than the highest rate applicable to any component compound. The column 2 rate is 25 percent ad valorem, but not less than the highest rate applicable to any component compound. Imports are eligible for duty-free treatment under the GSP and the CBERA.

Separate production data are not available for cross-linked sodium polyacrylate polymers. However, industry representatives estimate that total domestic production is about 15 million pounds per year.

Significant imports of this product did not begin until 1984, when levels reached about 50 million pounds, valued at about $77 million. Imports are thought to have remained at this level in 1986, accounting for about one-half of total U.S. consumption.

Industry sources indicate that U.S. exports are negligible.

The estimated annual revenue loss would amount to approximately $3 million per year.

Section 860. Cyclosporine

This section would suspend through December 31, 1990, the column 1 rate of duty for cyclosporine, an immunosuppressive agent used for the prevention of rejection of kidney, liver, or heart transplants. Clinical trials are underway for other applications of the drug, including a potential treatment for AIDS.

Cyclosporine can be classified in either TSUS item 439.30 (advanced natural drugs, not elsewhere specified) or item 439.50 (other drugs, n.e.s., including synthetic drugs), depending on the form in which it is imported. If imported as the bulk powder, the form used by the University of Minnesota, the drug is classified in item 439.30 with a column 1 rate of duty of 1.5 percent ad valorem. The column 2 rate of duty for this tariff item is 10 percent ad valorem. Products entering under this tariff item are eligible for duty-free treatment if they are imported from LDDC's or under GSP, CBERA, or the U.S.-Israel Free Trade Agreement.

If the cyclosporine is imported as an oral solution or a concentrate for intravenous injection, it is classified in TSUS item 439.50 with a column 1 rate of duty 3.7 percent ad valorem and a column 2 rate of 25 percent ad valorem. This TSUS item has the same Special rates of duty as does TSUS item 439.30 for products from LDDC's, beneficiaries of GSP and CBERA, and Israel.

There was no domestic production or export of cyclosporine during 1981–85.

Industry sources estimate that the U.S. market for this product was valued at $55 million in 1985; the market is supplied entirely by imports.

Based on estimates from industry sources, expected annual revenue losses during 1987–90 will range from $0.8 million to $1.1 million per year.

Section 862. Glass Inners for Vacuum Flasks

This section would temporarily lower the column 1 duty on glass inners to 9 percent ad valorem. The reduction would remain in effect through December 31, 1990.

The provision is intended to reduce the rate for glass inners to bring them into conformity with the rates for completed vacuum bottles, thus providing tariff equity for U.S. manufacturers of vacuum bottles.

Domestically manufactured glass inners, which are inserted in vacuum bottles to keep food and beverages at selected temperatures for up to 8 hours, are composed of two blanks, one of which fits inside the other. The blanks are silvered, yielding a mirror-like surface that maintains the temperature of the food or beverage inside by reflecting heat. As the inner blank is inserted in the outer blank, an asbestos pad is placed between the two walls and all air between the two walls is evacuated, creating a vacuum. The two blanks are then neck-sealed (sealed at the top), creating a double-walled cylinder which is placed in a vacuum bottle. Glass inners can also be manufactured in a 1-step process, such as that used by Thermos at their British plant, and by more labor-intensive hand-blown methods, more commonly in countries with low labor costs.

Glass inners generally vary in capacity from less than one pint to more than 4 pints; they also differ in design, depending upon the specifications of the vacuum bottle manufacturer. Most inners are installed in new vacuum bottles, with a limited number used as replacements. Glass inners enter the United States under TSUS items 545.31, 545.34, 545.35, and 545.37. The column 1 duties for these categories are 2 cents each plus 10.4 percent ad valorem, 2.8 cents each plus 8 percent ad valorem, 4 cents each plus 8 percent ad valorem, and 6 cents each plus 8 percent ad valorem, respectively. The ad valorem equivalent of these compound rates are 15.7 percent, 13.6 percent, 14.8 percent, and 12.6 percent, respectively. Imports under these TSUS items are eligible for duty-free treatment under the GSP and CBERA. They all receive preferential duty treatment under the U.S.-Israel Free Trade Agreement.

There is no U.S. production or export of glass inners.

Total U.S. imports of glass inners during 1985 were 2,894,000 units, valued at $2,240,000.

The revenue loss due to enactment of this provision would be approximately $80,000.

Section 863. Certain Offset Printing Presses

This section would temporarily reduce the column 2 rate of duty on offset printing presses of the sheet-fed type weighing 3,500 pounds or more provided for in TSUS item 668.21 from 25% to 10% ad valorem. The reduction would remain in effect through December 31, 1990.

An offset press operates on the principle that one impression is made with each revolution of its cylinders. A sheet-fed offset press has three printing cylinders of the same size (plate, blanket, and impression) as well as inking and dampening systems. The plate is clamped to the plate cylinder. As that cylinder rotates, the plate comes in contact with the dampening rollers first, then the inking rollers. The dampeners wet the plate so the nonprinting area will repel ink. The inked image is then transferred to the rubber blanket on the blanket cylinder. Paper is printed as it passes between the blanket cylinder and impression cylinders.

During 1981–85, there were only three known U.S. producers of these presses. Each of these firms sells to different segments of the market. Currently, import competition is reported from the GDR and from Czechoslovakia, both subject to column 2 rates of duty.

The value of U.S. imports of these presses rose annually from $145 million in 1981 to $266 million in 1985. In 1985, by far the largest supplier, by value, were West Germany (63 percent of total import value) and Japan (28 percent of total import value).

The value of U.S. exports of these presses declined sharply from $6.0 million in 1981 to $0.6 million in 1984, then rose to $1.6 million in 1985.

During 1981–85, apparent U.S. consumption of these sheet-fed offset presses rose slightly, on a value basis, from an estimated $192.6 million in 1981 to $196.5 million in 1983. Apparent consumption then increased sharply to $261.1 million in 1984 and $319.1 million in 1985.

Estimated revenue loss would amount to $200,000 per year.

Section 864. Jacquard Cards

This section would suspend the column 1 rate of duty on jacquard cards through December 31, 1990.

Jacquard cards consist of a series of punched cardboard strips which are used to control the weaving pattern of jacquard looms. Each card controls the action of one warp thread for the passage of one pick. The holes in the cardboard strips control the weaving mechanism. The number of cards attached to a jacquard loom depends on the intricacy of the weave design. The cards are joined together by lacing to form a chain pattern. Jacquard looms are used to produce tapestries, brocade, brocatelle, figured neckties and dresses. Today, these cards have been replaced by heavily reinforced, treated paper rolls which, after machine punching, resemble player piano rolls. The paper rolls are still referred to by the industry as jacquard cards.

The purpose of this provision is to reduce the cost of imported jacquard cards through the elimination of tariffs. Industry sources indicate that they have been unable to locate domestic manufacturers of jacquard cards.

Jacquard cards are provided for in TSUS item 670.56 with a column 1 duty rate of 7 percent ad valorem and a column 2 rate of 35 percent ad valorem. Imports from designated beneficiary countries are eligible for duty-free treatment under the GSP, the CBERA, and the U.S.-Israel Free Trade Agreement.

There are no domestic manufacturers of jacquard cards presently in operation. Jacquard cards are used on jacquard looms which have been replaced by the more efficient and faster shuttleless rapier, air jet, and water jet looms.

Imports of jacquard cards increased from $179,000 in 1981 to $268,000 in 1984, before declining to $226,000 in 1985. Estimated imports in 1986 amount to $290,000. The majority of imports, according to industry officials, are unfinished rolls, many of which are finished and re-exported.

U.S. consumption of jacquard cards during 1981-85 was satisfied entirely by imports.

The average annual revenue loss during 1987-90 would be approximately $15,000.

Section 865. Certain Parts of Indirect Process Electrostatic Copying Machines

This section would suspend through December 31, 1990, the column 1 rate of duty on certain parts of direct process electrostatic copying machines, provided for in TSUS item 676.56.

The duty suspension would affect parts of indirect process electrostatic copying machines, commonly referred to as plain paper copiers (PPC's). These copiers reproduce documents by placing an image on an intermediate (typically an electrostatically charged photoconductor drum) and then transferring that image onto paper. The particular parts involved are quite varied and admit of no general description, other than their use in indirect process electrostatic copying machines. The parts are made of metal, plastic, and/or glass and include both assemblies and individual components.

This duty suspension is intended to help maintain the competitiveness of Xerox Corporation's manufacturing facilities (which employ 6,700 people), encourage Xerox and other domestic manufacturers to expand domestic production, stem the tide of American manufacturers transferring assembly operations overseas, encourage foreign investment in U.S. manufacturing facilities, and allow time for Xerox's major domestic suppliers to improve their quality and price competitiveness.

Parts of indirect process electrostatic copying machines are classified in TSUS item 676.56. The column 1 rate of duty for these items is 3.9 percent ad valorem. The column 2 rate of duty is 35 percent ad valorem.

Copier parts from Hong Kong, Mexico, the Republic of Korea, Singapore, and Taiwan are ineligible for GSP benefits because of the "competitive need" limitations. Otherwise these products are eligible for duty-free treatment under GSP, CBERA, and the United States-Israel Free Trade Area Implementation Act of 1985.

No identifiable industry, per se, produces parts for indirect process electrostatic copying machines. Domestic copier manufacturers contract with a large number and variety of individual firms for the supply of specific components. No estimates on the value of U.S. producers' shipments on these products are available.

Separate consumption figures for copier parts are not available. Imports in 1985 are estimated to have ranged from $140 million to $175 million.

Estimated revenue losses are estimated to be $6.475 million per year.

Section 866. Extracorporeal Shock Wave Lithotripters Imported by Nonprofit Institutions

This section would suspend the duty for extracorporeal shock wave lithotripters imported by nonprofit institutions through December 31, 1987. This provision provides for duty-free treatment retroactive to December 31, 1982, upon proper request filed with Customs.

This provision goes beyond the permanent duty reduction for all lithotripters provided for in section 812 and provides for duty-free treatment for such lithotripters which are imported by nonprofit hospitals and research or educational institutions. As indicated in the section of this report describing section 812 of the bill, there has been no U.S. production of these lithotripters, except for investigational use.

Section 867. Certain Plastic Sheeting

Section 867 would provide temporary duty-free treatment to one type of plastic sheeting presently classified in item 774.55 of the TSUS. A new item 915.10 would be added to grant duty-free entry to articles from countries entitled to column 1 duty rates. The column 2 rate of duty would remain 80 percent ad valorem.

The subject material is lead-impregnated, transparent, plastic sheeting, generically termed "acrylic sheet," which combines two properties—superb light transmission and radiation shielding. Included in the general composition of the sheet is lead in the amount of 30 percent by weight, although this can vary from lot to lot by about 1 to 3 percent. A sheet containing about 13 percent lead by weight is expected to enter the market soon.

Leaded acrylic sheet is used in a variety of products, ranging from shielding screens that allow doctors to view X-ray treatment while being protected from X-ray exposure to filters that control the amount of X-ray exposure to the patient.

Hospital officials reportedly do not consider unleaded acrylic sheet to be an acceptable substitute for leaded acrylic sheet as a radiation barrier, which is at present the only use for leaded acrylic sheet.

The current column 1 rate of duty for the subject sheeting is 5.3 percent ad valorem and the column 2 rate is 80 percent. The product is eligible for duty-free entry under both GSP and CBERA.

Although a licensing agreement exists to produce the polymer, no U.S. commercial production is currently occurring.

There is one importer of leaded acrylic sheet from Japan, presently the only source of the product. During 1980–84 imports of the product ranged from below $200,000 in 1980 to approximately $450,000 in subsequent years. The current market price for the leaded sheet ranges from about $12 per square foot to about $170 per square foot.

Estimated annual revenue losses are $30,000.

Section 868. Doll Wig Yarns

This section would suspend, through December 31, 1990, the column 1 rate of duty on certain specialty yarns of manmade fibers to be used in the manufacture of wigs for dolls covered by TSUS items 309.32, 309.33 and 389.62. The column 2 rate of duty would remain unchanged.

The manmade fiber yarns covered by this bill include grouped nylon, polypropylene, or modacrylic fibers of continuous length—referred to as filaments—that are colored and not textured, whether or not curled. These yarns are packaged on spools or other containers not more than 6 pounds each.

The average ad valorem equivalent (AVE) duties paid on all imports under the categories covered by this legislation ranged from 10.3 to 14.7 percent in 1984. U.S. imports of the subject yarns are not controlled under the MFA. Additionally, these yarns are not eligible for duty-free treatment under GSP or CBERA.

Because the level of domestic production of certain specialty manmade fiber yarns used to manufacture wigs for dolls is low, specific information identifying this sector of the manmade fiber industry is not available. However, it is estimated by the American Yarn Spinners Association that there are fewer than 10 domestic producers.

Industry sources believe that U.S. production of the subject yarn is less than 1 million pounds annually.

U.S. imports were estimated to have been 106,000 pounds in 1980 increasing to 431,000 pounds in 1984. During 1984, the leading sources were believed to be Japan, Taiwan, West Germany, and the United Kingdom. A&B Artistic Wig Corporation expects to import about half a million pounds per year of these yarns for doll wigs.

The import duties for 1984 that would not have been collected had this legislation been in effect were approximately $138,000 at the column 1 rates.

Section 869(1). Mixtures of Hot Red Peppers and Salt

This section extends the duty suspension for certain mixtures of hot red peppers and salt in item 903.60 through December 31, 1990, with duty-free treatment retroactive to June 30, 1985, the date item 903.60 expired, upon proper request filed with the U.S. Customs Service. The duty on such imports was previously suspended from October 24, 1978, through June 30, 1981 and reinstated from July 1, 1981, through June 30, 1985. The only known U.S. importer of pepper mash imports this product from Central and South America.

Mixtures of mashed or macerated hot red peppers and salt, currently provided for in TSUS items 141.77 and 141.98, are often referred to as "pepper mash" and are used in the production of hot red pepper sauce. Pepper mash is made by crushing any of several varieties of hot red peppers and preserving the resulting pulp in salt, usually an 8 percent salt solution, in wooden kegs. The varieties of peppers commonly used in this process include cayenne, tabasco, serrano, and chili. The end product, hot red pepper sauce or Louisianna hot sauce," is made by adding vinegar to this preserved mixture of macerated peppers and salt.

The mixtures of hot red peppers and salt which are the subject of this legislation are provided for in items 141.77 and 141.98 with column 1 rates of duty of 12 percent and 17.5 percent ad valorem, respectively, and a column 2 rate of duty of 35 percent ad valorem. The column 1 rates were not changed as a result of the Tokyo Round of the Miltilateral Trade Negotiations.

The domestic hot sauce industry is comprised of approximately six firms, mostly in Louisiana, which produce hot red pepper sauces from pepper mash, and at least another 30 hot sauce makers scattered around the United States that use ingredients other than hot red peppers. The ingredients used by these other firms usually consist of jalapeno peppers (a hot, green pepper) or an oleo-resin (a synthetic) and tomato sauce mix, and are generally used to make taco or enchilada sauces for Mexican-style foods.

Both taco and enchilada sauces are somewhat competitive with the hot red pepper sauces, especially those lower-priced red pepper sauces made from non-tabasco peppers. Pure tabasco sauce is a higher priced sauce and, according to those firms processing it, a higher quality sauce. The McIlhenny Company produces only tabasco sauce and probably accounts for the bulk of the U.S. production of this article, but it is not known what share of U.S. production of hot sauces is accounted for by that company.

The growers of hot red peppers are concentrated in Louisiana, Mississippi, and Texas. Approximately 4,000 acres are devoted to the production of such peppers in these States. Most of these growers do grow some specialty crops as well as hot peppers.

Data on U.S. production of pepper mash or hot sauces are not available, but it is believed that such production is trending upward. The production of hot sauces is not seasonal but the production of pepper mash, the major ingredient of hot red pepper sauce, follows the seasonal pattern of the hot red pepper harvest during the summer and fall months.

The only known imports of pepper mash in recent years have been of the tabasco pepper variety for the account of the McIlhenny Company. Colombia and Honduras together account for almost two-thirds of McIlhenny's imports; the supplies from Mexico constitute less than one-fifth. U.S. imports from Colombia and Honduras are entitled to duty-free treatment under the GSP.

According to domestic industry sources, there have been no exports of pepper mash in recent years; however, a significant amount of the U.S. output of hot sauces is shipped abroad. Precise figures are not available, but an estimated 30–40 percent of U.S. production is sold in foreign markets. Japan and Europe are the principal markets for the higher-priced hot sauces and the Middle East is a leading outlet for the lower-priced products.

Consumption of hot sauce in the United States is believed to be in a long-term uptrend because of (1) the evolution of American taste toward spicier foods in general, and (2) the increased consumption of Mexican-style food specifically.

The column 1 rate of duty on imports of mashed or macerated hot red peppers has been suspended for most of the period since late 1978; thus, there would be no substantial change (loss) in revenue. The estimated loss in revenue would have been $12,000 in 1985.

Section 869(2). Cantaloupes

The proposed legislation would extend the suspension of duty in item 903.65 on fresh cantaloupes entered during January 1 through May 15 through December 31, 1990, with duty-free treatment retroactive to May 15, 1985, the date item 903.65 expired, upon proper request filed with Customs.

Cantaloupes, the most important melon marketed in the United States, are generally used fresh as an appetizer, snack, or dessert, or may be cut into pieces for use in fresh fruit salads. Fresh cantaloupes are nonstorable and generally maintain their quality for only several weeks after harvest. This characteristic makes the marketing of cantaloupes seasonal.

This provision would impose no duties on imported cantaloupes during the period when domestic production is nil.

Cantaloupes are imported with a column 1 rate of duty of 20 percent ad valorem under item 148.10 between August 1 and September 15 and 35 percent ad valorem under items 148.12 or 148.17 the rest of the year. The column 2 rate is 35 percent ad valorem year round. Cantaloupes entered between August 1 and September 15 are eligible for GSP although Mexican cantaloupe imports exceed the "competitive need" limits. All cantaloupes are eligible for CBERA duty-free treatment.

Domestic production increased from 1.2 billion pounds in 1980 to 1.5 billion pounds in 1984. Production during January 1, to May 15 is believed to account for about 5 percent of annual U.S. production.

The cantaloupe harvest is highly seasonal. While the shipping season normally begins in late April or early May for cantaloupes produced in Arizona, California, and Texas, the bulk of domestic shipments are made from June through August.

Cantaloupes are produced commercially in at least 25 states, with more than 90 percent of the crop harvested in California, Texas, and Arizona. Cantaloupes require a long growing season and are susceptable to a number of diseases that limit the areas where they can be grown.

During 1980–84, total U.S. imports of cantaloupes rose irregularly from 170 million pounds in 1980 to 247 million pounds, in 1984. Data are not separately reported for the period January 1–May 15. However, imports during January 1–May 30 increased from 162.3 million pounds in 1980 to 228.7 million pounds in 1984. On a quantity basis, 88 percent of the cantaloupes imported into the United States during 1980–84 entered during the period January–May. Mexico is by far the leading source of imported cantaloupes, supplying 89 percent of the total annual imports in 1984. Mexico was ineligible for GSP benefits due to its predominant share of total imports.

In recent years, over 100 firms imported fresh cantaloupes, with 25 of them accounting for the bulk of such imports in 1984. The large volume firms are located in the southwestern United States.

During 1980–84, U.S. exports of cantaloupes averaged 52.1 million pounds annually; exports amounted to 46.9 million pounds in 1984. Canada is the principal market for U.S. export of cantaloupes, accounting for 98 percent of total U.S. cantaloupe exports in 1980–84. Exports during the first 5 months of 1980–84 were equivalent to about 10 percent of total exports in each of those years.

During 1980–84, apparent U.S. consumption of fresh cantaloupes rose steadily and averaged about 1.5 billion pounds annually. The ratio of imports to consumption averaged 12 percent throughout the period. About 70 percent of consumption during January–May, roughly the period covered by the proposed legislation, was supplied by imports.

Assuming 1984 import levels, revenue loss would be about $9 million annually.

Section 869(3). Certain Wools

This section extends the suspension of duty on coarse wools (defined as finer than 44s but no finer than 46s) in items 905.10 and 905.11 through December 31, 1990. Column 2 rates of duty would be those prescribed by items 306.30 through 306.34. This legislation provides for duty-free treatment retroactive to June 30, 1985, the date these provisions expired, upon proper request filed with Customs.

The system most commonly used in the United States to grade wool is referred to as the count system, which classifies wool numerically according to fineness. Under the count system, mid to upper 60s, 70s, and 80s are fine; low 50s to low 60s are medium; and 30s to high 40s are coarse.

Wool fibers finer than 44s but not finer than 46s are coarse and virtually all domestic consumption of such wool is imported. It is largely used to produce blankets and to a lesser extent fabrics for coats, carpets, and home furnishings.

Wools finer than 44s but not finer than 46s have been eligible for duty-free treatment under temporary tariff provisions since November 8, 1977.

U.S. imports of wools finer than 44s but not finer than 46s had been granted a temporary duty suspension (along with other types of wools) from November 8, 1977 to June 30, 1985. Effective July 1, 1985 the rates of duty as negotiated in the Tokyo round of the Multilateral Trade Negotiations became effective.

Imports of wools covered by this legislation are not subject to control under the Multifiber Arrangement (MFA), nor are they eligible for duty free treatment under the Generalized System of Preferences (GSP). Additionally, U.S. imports of such wool from least developed developing countries (LDDCs) are not eligible for preferential duty rates, but they are subject to duty free treatment under the CBERA.

There is no domestic production of these wools.

Imports of the subject wools increased from 6,227,000 pounds in 1980 to 16,747,000 pounds in 1984. More than 80 percent of the total quantity and value of the subject wools was shipped from New Zealand.

If duties on the coarse wools covered by the legislation had been in effect in 1984, revenues would have amounted to 1.7 million.

Section 869(4). Needlecraft Display Models

Section 869(4) would extend the temporary duty-free treatment provided for in items 906.10 and 906.12 through December 31, 1990, to imports from countries entitled to most-favored-nation (MFN) status of needlecraft display models, primarily hand stitched, of completed mass-produced kits. The provision would provide duty-free treatment retroactive to June 30, 1985, the date these provisions expired, upon proper request filed with Customs.

Needlecraft display models are finished replicas of the articles that can be made from needlecraft kits, which a consumer may purchase at retail. The domestic manufacturers of needlecraft kits export the kits principally to Haiti, for completion and then import the stitched or worked articles for sale to retailers. The models are used as displays in retail stores to stimulate consumer interest and to promote sales of unfinished kits. In addition, the models allow the consumer to assess the difficulty of the stitching in light of his or her ability.

The models (and kits) represent a variety of articles, including pictures, decorative pillow covers, latch hook rugs, Christmas ornaments and stockings, wall hangings, tablecloths, napkins, and purses. The majority of the models are believed to consist of pillow covers, wall hangings, and Christmas ornaments of needlepoint, crewel embroidery, or counter cross-stitch.

According to industry sources, cost considerations largely preclude the manufacture of models from kits in the United States.

U.S. imports of the subject needlecraft display models from column 1 countries were free of duty from January 27, 1983 to June 30, 1985, when temporary TSUS items 906.10 and 906.12 expired. The MFN rates of duty otherwise applicable to such articles vary from approximately 7 percent ad valorem to 25 percent ad valorem.

There are no MFA quotas on these kits. Only 3 of the 23 articles covered by this legislation are eligible for GSP or CBERA.

U.S. production and exports of needlecraft kit models for commercial sale are believed to be negligible. However, some small retailers specializing in needlecraft have models stitched by their employees during work hours or by persons working in their homes. Compensation for the home workers may be in the form of either monetary payment or the return of the articles after their use for display purposes.

There is no commercial production of the completed display models in the United States because such production is labor intensive and, therefore, costly. Industry sources estimate that about 80 percent of the models are stitched in Haiti, primarily because of its available labor force, low wage rate (about $0.70 per hour), and proximity to the United States.

The National Needlework Association (TNNA) estimates that about one-half of its 425 member firms in the United States manufacture needlecraft kits. These producers vary from small firms specializing in only one type of needlework, such as crewel, cross-stitch, or needlepoint kits, to larger firms which produce a variety of needlecraft articles. Five producers together account for roughly three-fourths of U.S. production of needlecraft kits.

Several kit producers report that they sell their completed models to retailers at a loss of almost 20 percent, in anticipation that the models will increase kits sales. Some producers require retailers to purchase a minimum number of kits of a given design before the model can be purchased. However, the smaller producers are often unable to offer models to retailers because of the expense of having the models stitched and carrying them in inventory.

U.S. imports of needlecraft display models are not separately reported since imports of articles covered by TSUS items 906.10 and 906.12 are statistically reported under the 23 Schedule 3 provisions enumerated therein. However, TNNA estimates that the value of imports of these models amounts to $5 million to $10 million annually. About 5 firms account for 75 to 85 percent of the imports.

All but a small number of the imported models are made from U.S.-produced materials (e.g., yarn, fabric, matting, and thread). The models are stitched abroad and are then imported into the United States where framing or other finishing is completed.

Since data on the specific types of needlecraft kit models being imported are unavailable, it is impossible to provide a precise estimate of the potential revenue impact of this legislation; many different MFN rates of duty would apply to such articles, since 23 TSUS items are involved. However, on the basis of an estimated value of imports of these models of between $5 million and $10 million annually, the provision would be likely to result in an annual loss of revenue of $790,000 to $1.6 million.

Section 869(5). Triphenyl Phosphate

This section would extend the temporary column 1 suspension of duty for triphenyl phosphate under item 907.01. The extension would be effective through December 31, 1990, and duty-free treatment would be retroactive to September 30, 1985, the date the provision expired, upon proper request filed with Customs.

Triphenyl phosphate (TPP) is a colorless, odorless crystaline powder used principally as a fire-retarding agent and as a plasticizer for cellulose acetate and nitrocellulose used in the manufacture of photographic and other films. TPP functions to reduce the flammability of these films, as well as increasing the flexibility, making them safer and easier to handle. More than 75 percent of all TPP produced is used in these applications.

The market for the major end-uses for TPP, nitrocellulose films and cellulose acetate, has been declining for several years. Domestic manufacturers of TPP have virtually abandoned production of the product. Since imports of TPP supply most, if not all, domestic open-market demand, U.S. importers contend it would make sense to remove any impediment to access to the only remaining source of supply.

TPP is currently classified under TSUS item 409.34 with a column 1 rate of duty is 0.1 cents per pound plus 17.7 percent ad valorem. The column 2 duty rate is 7 cents per pound plus 57 percent ad valorem. Imports may be eligible for duty-free treatment under GSP and CBERA.

Separate production data are not available for TPP. However, industry representatives estimate that total domestic production during 1980–84 was substantially less than 10 million pounds annually.

Monsanto Company, St. Louis, Mo., and Eastman Kodak Company, Rochester, N.Y., were the only producers of TPP in 1981. Monsanto permanently ceased production of TPP in 1981. Borg-Warner Corp., Morgantown, W. Va., and FMC, Nitro, W. Va., also have the ability to produce TPP, but neither have reported production of this product during 1980–84 and both indicate that they have no immediate interest in this market. It is estimated by industry observers that most of Eastman Kodak's production is consumed captively in its photographic film manufacturing operations. U.S.

open-market demand for TPP is likely to be satisfied principally by imports in the future.

Separate import statistics on TPP were not available prior to 1984 when TPP was broken out as a statistical classification in item 409.3425. Imports of TPP in 1984 amounted to about 1.1 million pounds, valued at $764,000. The United Kingdom supplied 82 percent of total U.S. imports of TPP in 1984, while the Netherlands and South Korea each supplied about 8 percent.

In 1984, the only year for which import data are available, the calculated revenue lost as a result of the current duty suspension legislation amounted to $198,354. Since the U.S. market for TPP is a declining market, substantial increases in imports are unlikely and total revenue losses as a result of this legislation are not expected to exceed $110,000 per year in the near future.

Section 869(6). Menthol Feedstocks

This section extends the current suspension, under item 907.13, of the column 1 rate of duty for certain menthol feedstocks which expires on December 31, 1987, through December 31, 1990.

The menthol feedstocks covered by this provision are mixtures of synthetic organic chemicals produced from m-cresol. These feedstocks, which are used to produce two menthol isomers, *l*-menthol and *dl*-menthol, are crude mixtures of all eight optical isomers of menthol. These mixtures have no other commercial use in the United States.

The purpose of this continued duty suspension is to help preserve the American menthol industry by allowing it to remain competitive with foreign manufacturers that receive protection through government subsidies.

Mixtures of optical isomers of menthol are classified under item 407.19 with a column 1 rate of duty of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any individual component of the mixture. The column 2 rate of duty is 7 cents per pound plus 43.5 percent ad valorem, but not less than the highest rate applicable to any component material. Imports of the subject mixture are duty-free under the GSP and CBERA. Under the U.S.-Israel Free Trade Agreement, imports of this product from Israel are dutiable at the column 1 rate of duty, but will be staged over a 5-year period to free.

There are no U.S. producers and no exports of these chemical mixtures.

Industry sources estimate that imports of this product declined from $3.0 million in 1981 to $2.4 million in 1985.

Expected revenue losses would be about $350,000 per year.

Section 869(7). Isomeric Mixtures of Ethylbiphenyl

This section extends the temporary suspension of the column 1 rate of duty for isomeric mixtures of ethylbiphenyl under item 907.14 through December 31, 1986, and provides for duty-free treatment retroactive to June 30, 1985, the date this provision expired, upon proper request filed with Customs.

These mixtures consist of the positional chemical isomers, 3-ethylbiphenyl and 4-ethylbiphenyl, which are produced synthetically from petroleum. These chemicals are used primarily as heat transfer agents in the production of various plastics resins (e.g., polystyrene).

Isomeric mixtures of ethylbiphenyl are classified under TSUS item 407.19 with a column 1 rate of duty of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any individual component of the mixture. The column 2 rate of duty is 7 cents per pound plus 43.5 percent ad valorem, but not less than the highest rate applicable to any component material. Imports of the subject mixtures are eligible duty-free treatment under the GSP and CBERA. Under the U.S.-Israel Free Trade Area Implementation Act of 1985, imports are dutiable at the column 1 rate but are scheduled to be staged over a 5-year period to free.

There is no U.S. production of ethylbiphenyl.

Dow Chemical estimates that imports of the isomeric mixtures of ethylbiphenyl declined from a high of 458,000 pounds, valued at $453,000, in 1981 to 290,000 pounds, valued at $287,000, in 1985. Imports for this mixture during 1986 are estimated to be 400,000 pounds, valued at about $400,000.

According to industry sources, there are no exports of the subject mixtures.

Estimated annual revenue loss is expected to be about $735,000.

Section 869(8). Sulfapyridine

This section would extend the suspension of the column 1 duty rate for sulfapyridine (TSUS item 907.17) through December 31, 1990, and duty-free treatment would be retroactive to December 31, 1985, the date this provision expired, upon proper request filed with Customs.

Sulfapyridine, is classified in a group of chemicals known as anti-infective sulfonamides.

At one time sulfonamides were widely used in the treatment of infections. However, the development of resistance in formerly susceptible organisms has greatly limited the clinical usefulness of these drugs. In addition, substantial quantities have been used as growth promoters in animal feeds. Use of sulfapyridiene in animal feeds, as approved by the FDA, accounts for about 15 to 30 percent of annual consumption. The remainder of annual consumption is used in the production of other sulfa drugs, particularly sulfasalazine and sulfadiazine.

Sulfapyridine is classified in TSUS item 411.27. The current column 1 duty rate is 11.6 percent ad valorem and the column 2 rate is 7 cents per pound plus 128.5 percent ad valorem.

Imports are not eligible for duty-free treatment under GSP but are eligible for CBERA.

Sulfapyridine is not presently produced in the United States. American Cyanamid Co. and Napp Chemicals Inc. produced sulfapyridine until 1980-81. Industry sources maintain that sulfapyridine cannot be substituted in the production of certain sulfa drugs, particularly sulfasalazine.

During 1980-1982 imports of sulfapyridine ranged from about 106,000 pounds to about 70,000 pounds. According to industry sources, in 1983, the first year of the suspension of duty on sulfapyridine, imports amounted to about 120,000 pounds. Imports increased to about 145,000 pounds in 1984. The current market price for sulfapyridine is approximately $11.40 to $12.30 per pound.

Export data are unavailable because sulfapyridine is classified in a residual (basket) Schedule B number.

According to industry sources, annual U.S. consumption of sulfapyridine amounts to about 120,000 to 160,000 pounds.

Revenue losses are expected to total $687,000 for the period 1987–1988.

Section 869(9). Synthetic Rutile

This section would suspend until December 31, 1990, the column 1 duties on synthetic rutile, provided for in item 603.70 of the Tariff Schedules of the United States (TSUS), by amending item 911.25 in part lB of the Appendix to the TSUS to extend the effective period. The column 2 rate of 30 percent ad valorem remains unchanged. Duties on synthetic rutile were suspended almost continuously between October 26, 1974 and June 30, 1982, when the last suspension expired. The duty suspension would be effective with respect to articles entered, or withdrawn from warehouse for consumption 15 days after enactment of this legislation.

Synthetic rutile is derived from ilmenite by chemically extracting iron and other impurities from the ilmenite. Ilmenite, an ore of titanium, contains about 55 percent titanium dioxide. The upgrading processes result in a product with a titanium dioxide content approaching that of natural rutile, also an ore of titanium, which contains about 96 percent titanium dioxide. Since natural rutile is much more costly than ilmenite, increasing quantities of ilmenite are being upgraded to produce synthetic rutile.

In 1984, almost 84 percent of rutile was used to make the titanium dioxide pigments essential to the production of paint, paper, rubber, and plastics. In 1984, U.S. production of these pigments amounted to 800,000 short tons.

Synthetic rutile is classified under TSUS item 603.70, a residual provision for other metal-bearing materials of a type commonly used for the extraction of metal or as a basis for the manufacture of chemical compounds. Current column 1 rate of duty is 5 percent ad valorem.

Imports of synthetic rutile are eligible for preferential treatment under the Generalized System of Preferences (GSP) and are also eligible for duty-free treatment under the Caribbean Basic Economic Recovery Act (CBERA) and when imported from Israel.

Kerr-McGee Chemical Corp., the only known U.S. producer of synthetic rutile, has produced this material at its plant in Mobile, Alabama since 1977. In 1978 and 1979, Kerr-McGee expanded the plant's capacity to 110,000 short tons per year. The firm intends to expand capacity by another 15 percent by 1989. Total employment at the Mobile plant is 125 people.

Over half of the Mobile plant's production is used to satisfy the raw material requirements for Kerr-McGee's titanium dioxide pigment plant in Hamilton, Mississippi. Production information is confidential, but output has expanded during the last two years.

Domestic consumption is approximately equal to U.S. production plus imports. Demand for synthetic rutile strengthened in 1984 and again in 1985 due to rising demand by the titanium dioxie industry.

Annual revenue loss based on 1984 imports of synthetic rutile, valued at $3.8 million, is estimated at approximately $224,790, based on 5.9 percent ad valorem duty.

Section 869(10). Certain Clock Radios

This section would renew the previous suspension of the column 1 rate of duty on certain clock radios by striking out "Dec. 31, 1986" in Tariff Schedules of the United States (TSUS) item 911.95 and inserting in lieu thereof "Dec. 31, 1990." The proposed legislation would allow duty-free treatment retroactive to December 31, 1986 upon proper request filed with Customs.

The clock radios which are the subject of this bill are those solid-state (tubeless) radio receivers which incorporate a clock or timing mechanism within the same housing (or casing), hereinafter referred to as "clock radios." These radios may operate from batteries or electric current and are principally for consumer use, in that they are designed principally to receive radio signals from the entertainment broadcast bands. However, such bands are not restricted; the radios may receive on other bands, such as weather, police or fire, and aviation.

The clock portion of the radio may simply display time or may also sound an audible alarm. However, in most clock radios, the clock also controls the radio function by turning the radio on or off at preset times or intervals. Many models also provide for the control of external electric devices such as coffee pots. Such radio timers may be used to start the morning coffee as well as wake the occupant.

Two duty rates currently apply to imported clock radios having analog clocks or timers. The first duty rate is on the radio portion of the apparatus, while a different rate is applied to the clock or timer mechanism. If a clock radio incorporates an analog clock with movements, the clock portion is dutiable separately in accordance with headnote 5, part 2E of schedule 7 of the TSUS, which specifically provides for such constructive segregation. Clock radios with solid-state clocks or timers, however, are treated as an entirety for purposes of the duty suspension.

Solid-state radio receivers (including those with solid-state clock or timer mechanisms) are dutiable under TSUS item 685.14, covering entertainment broadcast band receivers not for motorvehicle installation, at a column 1 rate of 6 percent ad valorem. The column 2 rate of duty, applicable to Communist controlled or dominated nations listed in general headnote 3(d), is 35 percent ad valorem on the unit, or on the radio part of a clock radio incorporating an analog clock or timer.

Merchandise imported under item 685.14 is eligible for duty-free entry under the provisions of the Generalized System of Preferences (GSP). However, products of Hong Kong, Singapore, Taiwan, and the Republic of Korea are not currently eligible for GSP treatment because these countries have exceeded the "competitive need" limitations set forth in section 504 of the Trade Act of 1974.

Products of Israel classified in TSUS item 685.14 are dutiable at the rate of six percent ad valorem, which will be reduced in stages to a rate of free. Finally, products of designated Caribbean Basin Economic Recovery Act (CBERA) countries enter free of duty.

There is currently no known U.S. industry producing clock radios.

Total U.S. imports of clock radios increased from $108.7 million in 1981 to $196.9 million in 1984, before dropping to $178.5 million in 1985. In 1985, the largest foreign sources of clock radios were Hong Kong ($77.6 million) and Malaysia ($52.8 million). The unit value of U.S. imports fluctuated during 1981–85 but averaged $13.00 over the period.

Estimates of lost customs revenues for 1987–89 from the proposed duty-free entry of the subject clock radios average $8,000,000 per year.

Section 869(11). Machines Designed for Heat-Set, Stretch Texturing of Continuous Man-Made Fibers

This provision would extend the temporary duty-free treatment provided for in item 912.07 for column 1 imports of machines designed for heat-set, stretch texturing of continuous manmade fibers until December 31, 1990, and would allow duty-free treatment retroactive to December 31, 1985, when this provision expired, upon proper request filed with Customs.

Texturing is the process of crimping, imparting random loops, or otherwise modifying continuous filament yarn to increase cover, resilience, abrasion resistance, warmth, insulation, moisture absorption, or to provide a different surface texture. The stretch/heat-set machinery that would be affected by this proposed legislation uses a "false-twist" method for texturing.

The false-twist method involves stretching, twisting, heat-setting, and untwisting of the yarn. The result is a bulkier, more elastic yarn.

According to a 1978 survey, 94 percent of the texturing machinery in place at that time (measured in thousands of spindles) was of the false-twist type. Since 1978, nearly all of the machines using other methods (gear crimping, edge crimping, knit-de-knit, and stuffer box) have been replaced by false-twist machines.

Duty-free treatment under item 912.07 was originally granted principally because the U.S. yarn industry was unable to locate a domestic company that manufactured machines designed for heat-set, stretch texturing of continuous manmade fibers.

Machines for stretch/heat-set texturing of continuous manmade fibers are provided for in TSUS item 670.06 with a column 1 rate of duty of 4.2 percent ad valorem and a column 2 rate of 40 percent. The machines are eligible for duty free treatment under GSP and CBERA and the U.S.-Israel Free Trade Agreement.

During the period 1974–83 U.S. firms did not produce heat-set, stretch texturing machines for general consumption. Two domestic companies have begun production of these machines since 1984. Enterprise Machinery & Development Co., located in New Castle, Del., produces heat-set and air-jet machines, and Thieler Corp. International (TCI) of Gastonia, N.C. reportedly produces a range of heat-set texturing machinery. According to TCI officials, domestic sales of these products ranged between $1 and $2 million during

1984. Sales data for Enterprise Machinery & Development Co. are not available.

Data as to amount of imports are not specifically available as these items are entered in a category that includes other types of textile machines.

If this provision were enacted the average annual customs revenue loss that would result would be approximately $2.6 million. This estimate is based on 1984 import levels and on the staged reductions of the tariff rates scheduled for 1987–90.

Section 869(12). Small Toys

This section would extend the temporary suspension under item 912.20 of the column 1 rates of duty on certain enumerated small toys and games (valued not over 5 cents per unit) and jewelry (valued not over 1.5 cents per piece) through December 31, 1990. This provision provides for duty-free treatment retroactive to December 31, 1986, the date item 912.20 expired, upon proper request filed with Customs.

The subject articles consist of small or miniature playing cards, puzzles, games, balls, models, dolls, toy animals, toy musical instruments, magic tricks, practical joke articles, confetti, paper spirals and streamers, and noisemakers valued not over 5 cents per unit. This value limitation was adopted in order to limit the scope of the provision to toys for bulk vending machines. Also included is costume jewelry valued not over 1.5 cents per piece, including rings, earrings, bracelets, necklaces, key chains, pendants, and similar articles of personal adornment. Most of these goods are made from plastics, although they can be of other materials.

The subject articles are provided for in various TSUS items in parts 5D, 5E, and 6A of schedule 7 of the TSUS. Column 1 rates vary from 2 percent to 12.7 percent ad valorem. All the articles, except dolls classified in TSUS item 737.24, are currently eligible for duty-free entry under the GSP; all are eligible for duty-free entry under the CBERA. Imports of these articles from Israel, except for those classified in TSUS items 735.10, 737.15, 737.40, 737.60, enter free of duty pursuant to the U.S.-Israel Free Trade Area Agreement. Imports from Israel under items 735.10, 737.15, 737.40, and 737.60 are dutiable at the special reduced rates for these items.

No U.S. firms regularly produce the subject articles. Domestic production is negligible.

The National Bulk Vendors Association has estimated that imports of small toy and novelty items for bulk vending machines averaged $7 million to $10 million annually during 1981–85. This average represents a decline in imports of these goods in spite of the duty-free treatment, in effect since early 1983; annual imports were an estimated $10 million to $15 million during 1977–81.

There are no known U.S. exports of the small toys and novelties covered by this legislation.

Estimated revenue losses would be between $500,000 and $1 million per year.

Section 869(13). Stuffed Dolls, Certain Toy Figures and the Skins Thereof

This provision would extend through December 31, 1990, the temporary duty suspension applied under items 912.30, 912.34, and 912.36 to imports of stuffed dolls with or without clothing, skins for stuffed dolls, stuffed or filled toy figures of inanimate objects and skins for toy figures classified in TSUS item numbers 737.23, 737.47 and 737.51 respectively. This provision allows for duty-free treatment retroactive to December 31, 1985, the date these items expired, upon proper request filed with Customs.

Stuffed dolls are representations of human beings and have a textile exterior filled with a stuffing material, such as shredded textile fabric. These dolls, generally known as rag dolls in the toy trade, are either one-piece entirely stuffed dolls or dolls having a stuffed body with a hard head and extremities, usually of plastic.

Stuffed doll production is highly labor intensive; pieces must be hand-cut and sewn to produce the doll skin.

Stuffed or filled toy figures of inanimate objects either have predominantly nonhuman or nonearthlike features or are hybrids of more than one earthly creature. Stuffed or filled toy animals (earthly creatures) are excluded from this category. Stuffed or filled toy figures of inanimate objects can range from small inexpensive curiosities to larger-than-life-size creatures and characters costing many hundreds of dollars.

As with stuffed dolls, there is little domestic production of stuffed or filled toy figures of inanimate objects. Had these toys become popular a decade ago, a residual domestic industry might have produced them profitably in the larger size ranges (as is the case with stuffed animals), despite migration of other production to lower-wage countries. However, since inanimate figures have become popular only within the last several years, and remain concentrated in the smaller and medium size ranges, they have been sourced almost exclusively from abroad.

Doll and toy skins are the outer covering of a doll or toy or the unstuffed torso (basically the unstuffed doll or toy). In addition, a doll or toy having the arms, legs, or any incidental appendages filled or stuffed and the main portion of the body (the torso) unfilled would be considered a skin for Customs purposes.

The production of skins is highly labor intensive, requiring hand cutting and sewing. There is no known commercial production in this country of doll skins, negligible production of skins for toy figures of inanimate objects, and only minor production of skins for toy figures of animate objects (which is concentrated in skins for the largest toys).

Industry sources maintain that the production of these products is so highly labor intensive that the U.S. toy industry had resorted to sourcing almost exclusively from foreign production facilities. Thus, any duty is arguably an unnecessary addition to the final cost to the consumer. In addition, these sources assert that the duty suspension of imports of skins would encourage importers and manufacturers to finish the dolls and toys in the United States.

The subject articles are dutiable at rates ranging from 9.6 percent ad valorem to 13.4 percent ad valorem. All are eligible for duty free treatment under CBERA and GSP. Although products of Hong Kong, Taiwan and ROK are excepted in a few cases.

U.S. production of stuffed dolls increased from $4.8 million in 1980 to $44.9 million in 1984. Stuffed or filled toy figures of inanimate objects increased from less than $1.0 million in 1980 to $2.0 million in 1984. Doll skin production was nonexistent and toy skin production was less than $1.0 million throughout the period.

Specific information concerning the domestic industry producing only the subject products is not available. However, there were approximately 200 U.S. firms producing all dolls and stuffed toys in 1984. Employment in the doll and stuffed toy industry, which prior to 1982 had been declining, had recovered somewhat in 1984 to about 7,800 employees, including about 6,600 production and related workers. The industry is concentrated in New York, New Jersey, New England, and California.

The twenty largest firms account for the bulk of domestic doll and stuffed toy production.

Nearly all domestic products, including all the major firms, import to some extent; their activities range from the importation of skins to significant investment in foreign production facilities for supplying both U.S. and foreign markets. There is no known U.S. production of skins for stuffed dolls, and very little production of any of the remaining products except skins for stuffed toy animals. Some U.S. manufacturers produce skins domestically for the largest stuffed toy animals or the very high priced smaller animals as part of their overall U.S. production of the completed animals. More often, however, the skins are imported. It is not uncommon for those producers importing parts of finished stuffed dolls and toy animals to export the production equipment, particularly cutting and sewing machines, to their overseas facilities.

Imports of all categories covered by this legislation increased markedly in the period 1980-1984. Units imported increased from 1980 to 1984 as shown below:

Item	1980	1984
Stuffed dolls	10.9 M	79.6 M
Stuffed toys	N/A	7.5 M
Doll skins	N/A	7.5 M
Toy skins	N/A	37.3 M

The import share from GSP and CBERA countries was 78% for dolls and nearly 100% for the rest.

U.S. exports of these products is negligible.

U.S. consumption increased 1980-1984 as shown below. (value in millions of dollars)

Item	1980	1984
Stuffed dolls	17.9	261.1
Stuffed toys	Less than 1	8-10
Doll skins	N/A	7.5
Toy skins	N/A	38.3

Assuming that imports of stuffed dolls from Hong Kong and Taiwan and of toy figures of inanimate objects and toy skins from Korea remain ineligible for duty-free treatment under the GSP during 1987–90, the enactment of the legislation would result in an estimated loss of customs revenues of $15 million to $20 million annually.

Section 869(14). Umbrella Frames

This provision would renew the temporary suspension of MFN duties under item 912.45 on frames for hand-held umbrellas, chiefly used for protection against rain, by changing the termination date from December 31, 1986, to December 31, 1990. This provision would provide duty-free treatment retroactive to December 31, 1986, the date item 912.45 expired, upon proper request filed with Customs.

Umbrella frames and parts, which are not produced in the United States, were imported primarily from Taiwan and entered the United States duty-free under the provisions of the Generalized System of Preferences (GSP). When Taiwan lost GSP eligibility on March 30, 1984, under the so-called "competitive need" limitations, the applicable rate of duty became the column 1 rate, since reduced to 12 percent ad valorem.

Umbrella frames and skeletons of metal are classified in Tariff Schedules of the United States (TSUS) item 751.20, covering metal parts of umbrellas, walking sticks, canes, and other articles. The duty suspension, under item 912.45 in the Appendix to the TSUS, covers umbrella frames in one of the two statistical reporting numbers for umbrella frames and skeletons which is item 751.2005 for frames for hand-held umbrellas chiefly used for protection against rain (TSUSA item 751.2015 provides for all other frames and skeletons).

Articles classified in TSUS item 751.20 are eligible for duty-free entry under the provisions of the GSP. The current column 1 rate of duty under TSUS item 751.20 is 12 percent ad valorem; no further reductions are scheduled. These articles are eligible for duty-free entry under the Caribbean Basin Economic Recovery Act (CBERA) if imported from beneficiary countries. The rate for imports of such products from Israel is 4.8 percent ad valorem.

There is no domestic production of the type of umbrella frames covered by this legislaton.

Imports of frames for hand-held rain umbrellas increased, in terms of both quantity and value, during the period 1980–84. In terms of quantity, imports increased from approximately 1.2 million units to nearly 1.4 million units; in value, imports increased from an estimated $779,000 to $3.8 million. In 1984, Taiwan supplied 97 percent of total imports, distantly followed by Thailand.

The ratio of imports to consumption was approximately 100 percent for all years considered, both in terms of quantity and value.

Based on estimated 1984 imports of these articles of $3.8 million, the continued suspension of the duty of 12 percent ad valorem would result in an annual loss of U.S. customs revenues of approximately $456,000.

Section 869(15). Crude Feathers and Down

This section would extend the existing suspension of duty on crude feathers and downs under items 903.70 and 903.80 through December 31, 1990 and applies to articles entered after December 31, 1987. The current provision expires December 31, 1987.

TSUS items 903.70 and 903.80 (and the corresponding schedule 1 item—186.15) cover feathers and downs, whether or not on the skin, crude, sorted (including feathers simply strung for convenience in handling or transportation), treated, or both sorted and treated, but not otherwise processed.

The feathers and downs which are the subject of this legislation are provided for in item 186.15, with a column 1 rate of duty of 7.5 percent ad valorem and a column 2 rate of duty of 20 percent ad valorem.

The current rates under the "Special" rates of duty are free for imports of feathers and downs from developing countries under the Generalized System of Preferences, from countries provided for under the Caribbean Basin Economic Recovery Act and from Israel.

The suspension was enacted in 1975 to correct an anomaly in the TSUS in that certain feather- and down-filled garments were dutiable at seven percent ad valorem while feathers and downs, the principal input, were dutiable at 15 percent ad valorem.

Almost all domestically produced feathers and downs are obtained as a by-product of raising chickens, turkeys, ducks, and geese for meat. U.S. poultrymen, except those raising ducks and geese, give relatively little consideration to the price of feathers and downs in determining the size of their flocks, as the price for chicken and turkey feathers is quite low. At current price levels, the sale of waterfowl feathers and downs appears to provide a significant source of income for domestic duck and goose producers. The bulk of chicken feathers are collected at broiler-processing plants in the Southeast; most of the waterfowl feathers and downs are collected at duck-processing plants on Long Island, N.Y. and at goose-processing plants in the Midwest. A small quantity of feathers and downs is salvaged annually from wild pheasants and ducks.

U.S. production of feathers and downs affected by this legislation is estimated to have been about 15 million pounds annually in recent years. The bulk of such production is of chicken feathers. The total also includes an estimated three million to five million pounds of waterfowl feathers and downs; the bulk of which is from ducks, with U.S. production of goose feathers and downs estimated at less than 0.5 million pounds annually. A small amount of feathers from pheasants is produced. As the prices of different types of feathers and downs vary greatly, no value can be reasonably estimated for domestic production.

U.S. imports of feathers and downs decreased from 17 million pounds, valued at $74 million, in 1981 to 11 million pounds, valued at $51 million, in 1982 then rose to 19 million pounds, valued at $77 million, in 1984. Such imports declined slightly to 18 million pounds, valued at $65 million, in 1985. Virtually all U.S. imports consist of waterfowl feathers and downs which are largely imported in the unprocessed and crude state. Most are baled and shipped in the unprocessed state because if feathers and downs are baled after being cleaned they must be reprocessed to regain their bulk, thus adding an additional expense.

China, during 1981–85, generally was the leading U.S. supplier of feathers and downs in terms of quantity. Such imports consisted mainly of uncleaned feathers.

France generally was the leading U.S. supplier of feathers and downs in terms of value during 1981–85. Such imports from France consisted mainly of downs.

U.S. exports of feathers and downs declined during 1981–85, from six million pounds, valued at $47 million, in 1981 to three million pounds, valued at $23 million, in 1985. Taiwan was the principal U.S. export market for feathers and downs in terms of quantity, accounting for about 26 percent of the total during 1981–85. Other major U.S. export markets during this period in terms of quantity included Korea (21 percent) and Canada (11 percent). Korea was the principal U.S. export market for feathers and downs in terms of value accounting for about 45 percent of the total. Other major export markets in terms of value included Japan (22 percent) and Canada and Taiwan (nine percent each).

No information is available on U.S. exporters of feathers and downs; however, it is believed that importers and processors also export when world market conditions are favorable.

During 1981–85, apparent U.S. consumption increased, rising from 26 million pounds in 1981 to 31 million pounds in 1984. Apparent U.S. consumption dropped slightly to 30 million pounds in 1985.

Based on the current rates of duty on crude feathers and downs and on the 1985 level of imports, the estimated annual loss of revenue would be approximately $5 million.

Section 870. Effective Dates

This section identifies effective dates for the provisions in Subtitle B of Title VIII.

In general, except where noted, the amendments would apply with respect to articles entered on or after the 15th day after the date of the enactment of this act. For purposes of this section, the term "entered" means entered or withdrawn from warehouse for consumption, in the Customs territory of the United States.

In the sections where retroactive application has been provided, the entry of these articles would be liquidated or reliquidated as though such entry had been made on the 15th day after the date of enactment of this act. This would occur after proper request is filed with the Customs officer concerned on or before the 180th day after the date of the enactment of this act. For purposes of this section the term "entry" includes any withdrawal from warehouse.

Subtitle C—Other Customs Provisions

Section 871. Customs Bond Cancellation Standards

This section establishes a requirement for the Secretary of the Treasury to publish guidelines establishing standards for setting the terms and conditions for the cancellation of bonds. The purpose of the section is to ensure uniform, reasonable, and equitable decisions by the Secretary with regard to bonds.

Section 872. Scofflaw for Multiple Customs Law Offenders

Present law

Under current law, the penalties applicable to persons who violate our customs laws in importing merchandise are determined without regard to whether the party has previously been found in violation of such laws.

Explanation of provision

Section 872 directs the Secretary of the Treasury to issue an order prohibiting any person, who over a 7-year period has either been convicted of, or assessed a civil penalty for, 3 separate violations of one or more customs laws finally determined to involve fraud or criminal culpability, from importing or engaging others to import any goods or services into the United States. The prohibition on importing would remain in effect for such multiple customs law offender for a 3-year period beginning on the 60th day after the date on which the order is issued. Anyone who violates or knowingly aids or abets the violation of such an exclusion order would be subject to a fine of not more than $250,000 or imprisonment for not more than 10 years or both.

As amended by the Committee, this provision would no longer apply to violations involving gross negligence. This change reflects the Committee's concern that this provision not be used to penalize inadvertent violations. The provision would now only apply to violations involving fraud or criminal culpability, both of which would require willful intent to defraud the government.

In this regard, it is the Committee's understanding that in administering this provision, the definition of "fraud" will be as presently contained in Para.(B) (3) of Appendix B, Part 171, Customs Regulations (19 CFR), providing as follows:

> Fraud. A violation is determined to be fraudulent if it results from an act or acts (of commission or omission) deliberately done with intent to defraud the revenue or to otherwise violate the laws of the United States, as established by clear and convincing evidence.

The foregoing definition is the usual one in the application of virtually every Federal statute dealing with "fraud." The Committee is aware of a recent initiative by the Customs Service to modify the definition to eliminate the element of intent to deprive the government of revenue or otherwise violate U.S. law. The Committee disagrees with this concept, and it is its intention to retain the present definition in regard to the Secretary's administration of the provision under consideration.

For the purposes of this section, the term "customs law" refers to any Federal law providing a criminal or civil penalty for an act, or failure to act in importing goods into the United States. Among the statutes considered to be customs laws are sections 496 and 1001 (but only with respect to customs matters) and any section of chapter 27 of title 10 of the United States Code as well as section 592 of the Tariff Act of 1930.

Orders issued under this provision with respect to multiple customs law offenders which are firms, corporations or other legal entities, apply to all officers and principals of the entity as well as to any employee or agent of the entity who was directly involved in the violation concerned. The Secretary is further directed to prescribe rules for carrying out this section, including a list of applicable customs laws. Other Federal agencies are directed to notify the Secretary of all final convictions and assessments made concerning the enforcement of customs laws.

Reasons for change

The Committee is greatly disturbed at the apparent increasing efforts being made to circumvent our customs laws in the importation of merchandise. Since our customs laws do not provide specifically for increased penalties for repeated violations of such laws, there appear to be many repeat offenders. The purpose of this section is to create a strong disincentive for persons to attempt to violate our customs laws and to deal severely with those who do.

Section 873. Import Marking Provisions

Increased Penalties for Intentional Marking Violations

Present law

Section 304(h) of the Tariff Act of 1930 (19 U.S.C. 1304) provides for a fine of not more than $5,000, or imprisonment of not more than one year upon conviction for any person who "with intent to conceal" alters or removes the country of origin marking required under section 304.

Explanation of provision

Section 873(a) increases the maximum fine for intentional alteration or removal of country of origin markings to $100,000 on the first offense and $250,000 for subsequent offenses.

Reasons for change

The purpose of this provision is to stiffen the penalties applicable to individuals who knowingly attempt to conceal from U.S. consumers the name of the country of origin of imported products by altering or removing the country of origin marking on such products required by section 304. The Committee strongly believes that consumers have a right to know the origin of any product they purchase and is hopeful that this provision will create a strong disincentive for parties to engage in the fraudulent practice of altering country of origin markings.

Marking of Containers of Imported Mushrooms

Section 873(b) would provide that imported preserved mushrooms would not be in compliance with the marking provisions of section 304 of the Tariff Act of 1930 unless the containers indicate in English the country in which the mushrooms were grown. This legislation would not amend any existing statute or affect any existing rates of duty on imported articles.

In the United States, about two-fifths of the mushrooms consumed are fresh, and the remainder are processed. The great bulk of processed mushrooms are canned.

U.S. imports of canned mushrooms enter in all conventional containers sizes and styles of pack.

Since early 1981, entries of prepared or preserved mushrooms packed in a heavy salt solution in large containers (primarily 50- and 20-gallon plastic and 55-gallon steel drums) have been increasing. These are fresh mushrooms grown in the People's Republic of China (China) which have been cooked and then saturated with a heavy salt solution. Upon arrival in the United States, the mushrooms are washed and desalted before being subjected to conventional canning processes by domestic firms. Since 1980, the principal foreign suppliers of all canned mushrooms have been Taiwan, China, Hong Kong, and the Republic of Korea (Korea), with Spain and the Netherlands shipping significant amounts in 1984.

Preserved mushrooms are imported into the U.S. under 3 separate TSUS items which have rates of duty ranging from 1.3 cents per pound plus 4 percent ad valorem to 3.2 cents per pound plus 10 percent ad valorem. The column 2 rates are all the same—10 cents per pound plus 45 percent ad valorem. Articles in two of the items are eligible for GSP and those in all three are eligible for CBERA.

During 1980–84, annual U.S. sales of prepared or preserved (canned and frozen) mushrooms averaged 117 million pounds. In 1984, sales were 119 million pounds. In recent years, the leading states in production/sales of canned mushrooms included Pennsylvania, Indiana, and California, while Pennsylvania and Indiana led in frozen mushroom production/sales.

U.S. imports of prepared or preserved mushrooms increased 44 percent from 117.3 million pounds valued at $121.9 million, in 1980 to a record high of 169.1 million pounds, valued at $165.7 million, in 1984.

The leading foreign suppliers of prepared or preserved mushrooms in 1984 (and the share supplied by each) were Taiwan (37 percent), China (27 percent) and Hong Kong (13 percent), Spain (9 percent), and South Korea (7 percent). In 1984, the bulk of imported prepared or preserved mushrooms were canned mushrooms.

U.S. exports of prepared or preserved mushrooms rose irregularly from 578,000 pounds, valued at $392,000, in 1980 to 634,000 pounds, valued at $453,999 in 1984. In 1984, the four major markets for canned mushrooms, accounting for the bulk of total exports, were Hong Kong, Saudi Arabia, Spain, and Canada.

During 1980–84, apparent U.S. consumption of prepared or preserved mushrooms trended upward and averaged 234 million pounds annually; in 1984, consumption amounted to 287 million pounds.

The enactment of this provision would likely have little or no effect on the annual revenues collected on imports of prepared or preserved mushrooms, other than potential marking duties under section 304. Any increased cost of production in changing container labels to conform to this provision would likely be minimal, resulting in no increase in the dutiable value of the finished product or that being paid by U.S. processors of imports.

Section 874. Technical Provision Regarding Customs Forfeiture

Present law

In Public Law 98-573 a "Customs Forfeiture Fund" was established into which net proceeds from forfeitures would be deposited to be available to Customs, subject to appropriation, to pay designated expenses associated with seizure and forfeiture. This fund was inadvertently repealed during the last Congress by section 1152(b) of the Comprehensive Drug Penalty Act (Public Law 99-570).

Explanation of provision

This section would repeal section 1152(b) of the Drug Act and treat it as if it had never been enacted.

Reasons for change

This provision is a technical correction to reinstate the legislative authority for the continued operation of the Customs Forfeiture Fund.

Section 875. Sugar Drawback

Present law

Currently, section 313 of the Tariff Act of 1930 provides for drawback (refund) of customs duties paid on (a) articles imported for manufacturing into other articles for export, (b) exported articles substituted for like imported ones, (c) articles not conforming to specifications, (d) certain exported spirits and medicinal preparations, (e) imported salt used to cure fish and meats for export, (f) materials used to produce vessels for foreigners, (g) articles exported in the same condition as imported, and (h) jet engines entered for repairs.

All drawback claims require that the article be exported within five years of importation. Where substitution drawback is claimed, the exported product or manufacture must have been made (from imported or like domestic merchandise) within three years from the receipt of the imported article.

Drawback provides for the refund of 99% of all customs duties paid on the imported merchandise.

Explanation of provision

This section would allow drawback of customs duties paid on cane sugar imported from November 1, 1977, to March 31, 1985, provided that the export of refined sugar or of sugar-containing products manufactured from cane sugar occurs before October 1, 1991. The provision would allow the recovery, via drawback, of both previously paid import duties and section 22 fees (imposed under section 22 of the Agricultural Adjustment Act, as amended) for which the eligibility period for obtaining drawback has expired under current law.

The specified period in the legislative provision coincides with a period of time during which the column 1 rate of duty was at its highest permissible level and during which section 22 fees were in place. Since the provision would set an export time limit of October 1, 1991, it is possible that claims for drawback based on 1977 to 1985 imports could go on through September 30, 1994. It should further be noted that the period in which exports could be made (and drawback claimed) extends through the current expiration date of the domestic price-support program for sugar.

Reasons for change

The purpose of this provision is to enable U.S. sugar refiners to continue to export refined sugar to the world market with benefit of previously expired drawback. According to the U.S. Cane Sugar Refiners' Association, whose members would be the primary beneficiaries of this provision, enactment of this provision would enable them to export about 500,000 tons of refined sugar per year to the world market. The annual refund by the U.S. Treasury for drawback is estimated by the refiners' association to be approximately $53 million.

The provision is narrowly drawn to apply only to imports of raw cane sugar, and exports of refined cane sugar or products manufactured or produced from refined cane sugar, to ensure its application only to products relating to cane sugar, and not beet sugar. It has come to the attention of the Committee that certain importers of raw cane sugar may be claiming drawback for exports of refined sugar made from sugar beets. The special drawback treatment provided in this legislation is intended not to apply in such a situation. The special benefits of drawback are intended only for imports of raw cane sugar and exports of products made from raw cane sugar.

The section also requires the Secretary of Agriculture, in conjunction with the Commissioner of Customs, to study and report back to the Committee on Ways and Means of the House and the Committee on Finance of the Senate by June 30, 1987, on circumvention of the U.S. sugar quota through the importation of sugar blends. The report must address the severity of the problem, or lack thereof, and suggest concrete steps, as necessary, to prevent such circumvention. The purpose of this subsection is to provide the Committee with detailed information on the nature and extent of any circumvention of the sugar import quota resulting from the importation of refined sugar in the form of blended products.

Section 876. Forfeiture Procedures Regarding Pornography

This section explicitly defines as 30 days the time for instituting judicial proceedings on forfeiture of seized pornography imports. It also allows forfeiture proceedings to be instituted in the district to which the matter is addressed and permits a stay in civil forfeiture proceedings pending completion of any related criminal matter.

Current forfeiture law with respect to obscene material contains no express limitation on the time within which forfeiture actions must begin or be decided. The Supreme Court has interpreted the statute to include two fixed time requirements:

(1) judicial proceedings for forfeiture of material seized under the statute are required to be instituted no more than 14 days from the time the material is seized and

(2) the final decision in the action must be made within 60 days after the action is filed.

Forfeiture proceedings are currently allowed only in the district where the seizure takes place.

Because current law contains no express limitation on the time within which forfeiture actions must begin or be decided, the law has been interpreted by the Supreme Court to be 14 days from the institution of forfeiture proceedings and 60 days for the final decision. The extension of the time requirement from 14 days to 30 days would likely withstand constitutional scrutiny because (1) the Court in *Thirty-Seven (37) Photographs* indicated that 14 days was not the outer limit of constitutional delay, and (2) 30 days is less time than the 40-day and 6-month delays the Court did not wish to sanction.

Section 877. Relief of Certain Persons

The W.M. Keck Observatory Project, Mauna Kea, Hawaii

Section 877(a) would allow certain specified articles to be imported duty free for use in the construction of an optical telescope for the W.M. Keck Observatory Project in Mauna Kea, Hawaii. These articles would include the telescope structure, or frame, the observatory domes, and the primary mirror blanks.

The provision would not eliminate or change the current Tariff Schedules of the United States (TSUS) rates of duty under which the articles would otherwise enter. Instead, it would grant a special exemption from the applicable tariff rates for the articles specified above. The exemption would apply to the Keck Observatory Project only.

The provision further provides for the refund of any duty that may have been paid on any of the specified articles before enactment of the proposed law.

The Keck Observatory will house a ten-meter reflecting telescope with infrared capabilities that will be the most powerful optical telescope in the world. The telescope will consist primarily of an observatory dome, primary mirror blanks, and a telescope structure.

The observatory dome will be a 120-foot diameter steel, hemispherical structure. Such domes typically enclose telescopes; therefore, they also contain moving shutter doors which permit the telescope to view the sky. Domes are generally built in sections. Structural steel shapes are cut into various configurations, attached to steel trusses, and welded together.

The mirror blanks are made of a special "zero expansion" ceramic material. Although the material is not glass, it has both glass-like and crystalline properties. It has such low thermal expansion rates over a wide temperature range that precision parts made of it are not subject to changes resulting from alterations in temperature. It is therefore an ideal mirror substrate mount for astronomical and infrared telescopes because changes in the reflector caused by temperature fluctuations would impair the quality of observations. Because of the difficulty of using a ten-meter mirror blank, the designers of the Keck telescope have developed mosaic of 36 hexagonal mirror segments only 1.8 meters in diameter.

The telescope structure is a high precision space frame which supports the primary mirror and provides ultra-precise movement to point the optical system to selected areas in the sky.

The Keck telescope will have a resolution three times that of any other telescope in the world. It will be used to view distant galaxies and will be able to collect enough light from them to determine their red-shifts, a measure of astronomical distance. Other uses include direct imaging in thermal infrared; thermal infrared spectroscopy; wide field imaging at optical and infrared wavelengths, spectroscopy and polarimetry of single objects and other experiments to discover the origin of stars, planets, and galaxies.

The steel observatory domes would be classified under TSUS item 653.00, which pertains to certain fabricated products of iron or steel such as hangars, buildings, other structures, and parts of structures. The column 1 rate of duty is 5.7 percent. The column 2 rate under item 653.00 is 45 percent ad valorem.

The articles covered under item 653.00 are currently eligible for duty-free treatment under the GSP (for all countries except the Republic of Korea), the Caribbean Basin Economic Recovery Act, and the U.S.-Israel Free Trade Area Act.

The telescope structure or frame and primary lens blanks are both classified under item 708.65 (frames, mountings, and parts of telescopes) and are dutiable at the rate applicable to the article of which the frames and mountings are part. In this case, it would be the rate applicable to item 708.61 (telescopes designed for use with infrared light). The column 1 rate of duty is 2.2 percent. The column 2 rate under item 708.61 is 35 percent ad valorem.

The articles covered under item 708.61 are currently eligible for duty-free treatment under the GSP, the CBERA, and the U.S.-Israel Free Trade Area Act.

Enactment of this legislation would result in a loss of customs revenues of about $610,000, based on the 1986 rates of duty under TSUS items 653.00 and 708.65 applied to the articles specified in the provision.

Relief of Rukert Marine Corporation of Baltimore, Maryland

Section 877(b) provides that certain entries of synthetic methionine from Japan made between March 26, 1976, and March 10, 1977, shall be reliquidated without liability of the importer of record for antidumping duties, and that any such duty, if paid, shall be refunded. These duties were assessed by the Customs Service as a result of its determination under the antidumping law in effect at the time that synthetic methionine from Japan had been sold in the United States at less than its fair value, with a dumping margin of 44.14 percent ad valorem. Pursuant to the Customs Service determination, the Department of Commerce, which assumed responsibility for antidumping matters on January 1, 1980, issued an order for the assessment of the duties. Because the Rukert Marine Corporation was the importer of record for the merchandise, it became liable for payment of the additional duties.

The Rukert Marine Corporation sought exemption from the collection of these duties because the corporation, which acted as the customs broker for entries of the merchandise, did not receive actual notice of its potential liability for the antidumping duties until after the period had expired during which it could have avoided liability by substituting the name of the actual consignee of the merchandise.

The assessed amount of antidumping duties is approximately $258,000.

Relief of Minemet, Inc., New York

Section 877(c) would instruct the Secretary of the Treasury to reliquidate, as free of duty under item 911.12 of the Appendix to the Tariff Schedules of the United States (TSUS) (in effect at the time of entry), four entries of tubular tin products imported through the port of New York in March 1979. This would enable Minemet, Inc., to obtain the duties previously paid by submitting a certificate of actual use (in this instance a remelt certificate) for the products to the U.S. Customs Service, at the original port of entry, within 120 days from the date of enactment of this Act.

The Customs Service classified the subject products in TSUS item 622.40, pipes and tubes and blanks therefor of tin. The column 1 rate the duty under this item in 1979 was 6 percent ad valorem, and the column 2 duty rate was 45 percent ad valorem; the current column 1 duty rate is 2.4 percent ad valorem. Imports under TSUS item 622.40 were then eligible for duty-free entry under the Generalized System of Preferences (GSP) if the product of a beneficiary country while today all GSP-eligible countries may claim duty-free entry for such articles. Such products from designated beneficiary countries are eligible, as of late 1983, for duty-free entry under the Caribbean Basin Economic Recovery Act (CBERA). Imports under TSUS item 622.02 have been unconditionally free of duty since its enactment.

Enactment of this provision would cause a customs revenue loss of $216,000. This figure represents the amount of duty that Minemet paid on the articles in question, which it would be able to recover.

Section 878. Custom Services at Pontiac/Oakland, Michigan, Airport

Section 878 amends section 236 of the 1984 Trade and Tariff Act to specify that the airport located at Pontiac/Oakland, Michigan, would become a reimbursable customs port. It would also eliminate the maximum number of locations that Customs may serve on a reimbursable basis.

The U.S. Customs Service discontinued its service in the early 1980's at a number of small airports as a cost-cutting measure. This move apparently disadvantaged some business interests that had come to rely upon the availability of a Customs operation at some of these locations. As a result of the pressure brought to bear by these interests, the Congress specified in the 1984 Trade and Tariff Act that the airport located at Lebanon, New Hampshire plus three non-designated other small airports (that would otherwise not qualify as a Customs location) could be provided with customs services on a reimburseable basis. Since enactment of that provision, Customs has had many requests for establishment of these locations.

The Committee recognizes that many small airports, such as Oakland/Pontiac Airport in Pontiac, Michigan, and the airport located at Lebanon, New Hampshire, presently have neither the volume nor the level of business to require the availability of full-time customs services. Therefore, the Committee urges the Secretary of the Treasury to provide customs services at the Oakland/Pontiac Airport and charge a fee based on actual hourly costs, equal to expenses incurred.

Subtitle D—Implementation of Nairobi Protocol

The proposed legislation would make permanent changes to the TSUS to implement the Nairobi Protocol to the earlier Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials. Such changes would become effective with respect to articles entered, or withdrawn from warehouse for consumption on or after the latest of 1) the 15th day following the date of enactment; or 2) the 15th day following the deposit of the U.S. ratification of the Protocol. The Protocol's intent is to contribute to the cause of peace through a freer exchange of ideas and articles across national boundaries. To achieve this goal, duty-free treatment would be extended to various printed materials, visual and auditory materials, tools for certain scientific instruments, and articles for blind and handicapped persons. The Protocol added new articles to the group receiving duty-free treatment under the Agreement and is aimed at ending the restrictions on the type of importers eligible to obtain such benefits. Duty-free treatment will apply to subject articles retroactive to August 11, 1985 upon proper request filed with Customs.

Section 881 sets forth the short title of this subtitle, the "Educational, Scientific, and Cultural Materials Importation Act of 1987." Section 882 describes the purpose of the act; section 884 repeals the 1982 Act; and sections 885 through 888 amend and create tariff provisions for articles to be afforded duty-free treatment pursuant to the Act.

Sections 889 and 890 would permit the President to modify portions of the duty free treatment authorized under the Act. First, section 889 would empower him to terminate or narrow, or impose conditions on, the duty-free treatment granted to the tools for scientific instruments and articles for the handicapped. This authority would be available only where the duty-free treatment of a type of article has a "significant adverse impact" on all or part of a U.S. industry producing the like or directly competitive article.

All actions to change the duty treatment of covered articles could occur only after public and private parties had an opportunity to present views. The section would further deem ongoing proceedings under the 1982 act, or any continuing action under it, to be proceedings or actions under the proposed section. (This includes the investigation on hearing aids.)

Section 890 would permit the President to expand the scope of the duty-free treatment of the visual and auditory material covered by section 886, within the interest of the United States. Such action could include the removal of or change in any conditions previously imposed as to those imports. The section is intended to permit the President to move from implementing the narrower Annex C–2 to the less restrictive Annex C–1; the latter lacks the limitations on the nature of articles and type of importers eligible to claim free entry that are present in C–2. Any such action would become effective on the fifteenth day after it is proclaimed.

Other sections of this subtitle would modify procedures to obtain duty-free eligibility for scientific apparatus (section 891) and would also provide for collection of statistical information (section 892) for imports of articles for the handicapped to assist in the implementation of potential actions limiting duty free treatment under section 889.

The Florence Agreement was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in July 1950 and entered into force as to ten countries on May 21, 1952. The Agreement provides for the exemption from customs duties of specified publications, other information materials, and objects of cultural and artistic interest in order to promote the free exchange of ideas. The Agreement entered into force as to the United States on November 3, 1966, upon issuance of Presidential Proclamation 3754; the duty-free treatment commenced on February 1, 1967.

The Nairobi Protocol, drafted between 1973 and 1976, was opened for signature on March 1, 1977 and represents both an extension of the Agreement to additional categories of articles and application of original provisions to new products. The Protocol has eight annexes, four of them mandatory for contracting parties, covering groups of articles to receive duty-free treatment. A fifth annex has two versions, one broader than the other; the proposed legislation would implement the narrower version.

Under the Protocol, a contracting party is obligated to exempt the following articles from customs duties and other charges:

(1) printed books; printed publications and documents of a non-commercial character (Annex A)

(2) works of art and collector's pieces of an educational, scientific, or cultural character (Annex B)

(3) scientific apparatus or instruments imported by approved public or private scientific or educational institutions, (Annex D)

(4) articles specially designed for the use or advancement of the blind or other physically or mentally handicapped persons, when the article is imported by approved institutions (Annex E)

Contracting parties also agree to extend such free entry to either of the following:

(1) visual and auditory materials, including films (or negatives); sound recordings; patterns, models (except toy models), and wall charts of an educational, scientific, or cultural character; video-tapes; holograms; multi-media kits; and other materi-

als (Annex C.1—originally adopted by the United States through the 1982 act); or

(2) the same materials, when limited to those of an educational, scientific or cultural character imported by certain entities (Annex C.2—to be implemented by the proposed legislation with the potential of moving to Annex C.1 at a later date).

Parties may choose to grant free entry to sports equipment (Annex F), musical instruments and equipment (Annex G), or material and machines used for the production of books, publications, and documents (Annex H) under specified circumstances. The United States has not adopted these three annexes.

Restrictions on importation or subsequent circulation of these articles can be applied if directly based on national security, public order, or public moral considerations. In ratifying the Agreement, the United States was permitted to attach a reservation which allowed for the suspension of any obligation under the Agreement for those imported articles covered by the Agreement that prove injurious to domestic industry producing a like or directly competitive product.

The temporary tariff treatment afforded by the Protocol was provided in Proclamation 5021 of February 14, 1983 with an expiration of August 11, 1985.

In order to ascertain whether the domestic hearing aid industry has been harmed by the Protocol approved duty free importation of hearing aids the ITC instituted investigation No. 332-215 on June 11, 1985. No change in the tariff treatment of these articles resulted from the investigation.

The existing column 1 tariff rates for those articles covered by the proposed legislation vary from "free" (this is the case for most of the articles) to 3.3 percent ad valorem. Approximately half of the articles are eligible for GSP and all of the articles (with the possible exception of some articles for the handicapped such as special watches) are eligible for CBERA. The temporary duty suspensions on these articles expired August 11, 1985.

In 1984, the value of shipments (receipts) by the commercial printing industry was estimated at $32 billion. Specific shipment data on catalogs, drawings and plans, and photographs and certain pictorial matter—the significant imported articles that would be given duty-free treatment—are not available. However, it is estimated that domestic receipts from catalogs, drawings, and plans account for approximately 5 percent of the annual value of receipts of the U.S. commercial printing industry.

U.S. production of motion-picture film cannot be accurately measured from the available statistical data. However, the manufacture of video products has expanded, mainly as a result of the increasing demand of video-taped films for use on home video systems.

Data are not available concerning the domestic production of tools specially designed to be used for the maintenance, checking, guaging or repair of instruments or apparatus for which no corresponding or alternative articles is manufactured in the United States. Such production is believed to be small.

Data are not separately available concerning the production of articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons, since the range of products potentially included in that category is extensive.

Printers of catalogs, drawings and plans, and photographs and matter represent a relatively small portion of a substantial commercial printing industry. Commercial printing products are basically grouped into six major segments, each of which contains articles involved in the legislation. These six grouping are: magazines and periodicals; catalogs and directories; general job printing; advertising printing; labels; and legal work.

There were approximately 30,000 commercial printing establishments in 1984. Production employees accounted for 75 percent of all employment in the commercial printing establishments in 1984.

About two-thirds of all printing plants are located in the Eastern United States. About 20 percent of the plants are located west of the Rockies and on the Pacific Coast, and the remaining 15 percent are in the Central States. Domestic production accounts for the bulk of U.S. consumption, with imports making only a minor contribution.

Data are not reported concerning the number of etablishments and employees in the motion picture industry.

Although there are many producers of the broad category of articles that are specially designed or adapted for the use or benefit of physically or mentally handicapped persons, no data can be included concerning such firms. Similarly, no data are available concerning production of all the sound or combination recordings in proposed TSUS item 870.34.

U.S. imports of printed matter are relatively insignificant compared with domestic production. Imports of catalogs, drawings and plans, and photographs and certain pictorial matter were also only a small portion of domestic consumption of these products, with combined import valued at about $121 million in 1984. The leading source of imports of catalogs, drawings and plans in 1984 was Canada. Trade in printed matter occurs primarily because of unique content rather than for economic benefit.

The value of imports of exposed motion-picture film, related sound recordings, and recorded video tape for distribution in the United States is insignificant in relation to the value of domestic production and is much less than that of exports. Imports increased from $18.1 million in 1980 to $23.2 million in 1984. The supplier of imported films vary depending upon whether U.S. pictures are filmed on location (which is determined in part by the foreign exchange rate) and the box office success of foreign productions in the United States. Imports by nonprofit institutions cannot be specified.

Total U.S. imports of sound recordings under TSUS items 724.20 through 724.40 in 1980–1984 grew consistently from $50,907,000 to $155,981,000, averaging $87,297,000. The imports entered by approved institutions cannot be separately identified.

Imports of the various educational, scientific, and cultural articles provided for in TSUS item 870.30 averaged $10 million during 1980–84. The leading source in 1984 was Norway, which provided 56 percent of the total.

U.S. exports of catalogs, drawings and plans, and photographs and certain pictorial matter (exposed film) were valued at a combined total of $80.2 million in 1984, up from $45.3 million in 1980. The largest of these categories, drawings and plans increased from $11.6 million to $42.0 million between 1980 and 1984. The major export markets were Denmark and the United Kingdom. Exports of exposed film increased from $17.1 million in 1980 to $22.0 million in 1982; in 1984 such imports amounted to $19.0 million. The major export markets were Canada and the United Kingdom. Exports of catalogs increased from $16.6 million in 1980 to $19.2 million in 1984. The leading export markets were Canada, the United Kingdom and Australia.

The United States is the world's largest exporter of motion-picture films. There are approximately 75 countries to which the U.S. exports motion-picture films, the most important being the major industrialized nations, which account for an estimated 45 percent of total foreign remittances. The top 15 markets for U.S. film exports account for about 75 percent of remittances from foreign film rentals.

No statistics are available concerning exports of articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons.

U.S. consumption of catalogs, drawings and plans, and photographs and other pictorial matter is basically supplied by domestic production. Annual consumption data are not available but are estimated to be almost equal to annual production, or about 5 percent of the annual value of receipts of the U.S. commercial printing industry.

U.S. consumption, as well as production, exports, and imports, of motion-picture films cannot be accurately measured because of the nature of the statistical data available.

No information is available concerning the apparent U.S. consumption of tools specially designed for the maintenance, checking, gauging, or repair of instruments or apparatus for which no corresponding or alternative article is manufactured in the United States. However, it is believed that imports supply most, if not all, of U.S. consumption, since the machines are also imported.

Data are not available regarding the consumption of articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons. It is believed, however, that U.S. made articles supply the bulk of consumption.

Revenue losses from the proposed changes to schedule 2, part 5 are likely to be minimal. Total annual customs revenues generated in 1984 to articles classified there were approximately $1.1 million. Revenue loses resulting from all other current TSUS items affected by the legislation would be insignificant, since many covered articles already enter duty-free or do not enter in significant volume.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. Titles I, II, and VIII of H.R. 3, as amended, were ordered favorably reported by the Committee by a recorded vote of 34–2.

OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee has concluded, as a result of extensive hearings held by the Subcommittee on Trade and the full Committee and an in-depth review of the issues involved, that amendments to various trade laws and the addition of certain new legislation is necessary to address current forms of unfair trade practices for the reasons described above under the Background and Purpose of the bill.

With resepct to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in this bill.

BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that Committee amendments to Titles I, II, and VIII of H.R. 3 do not provide any new tax expenditures. The additional budget authority is shown in the Congressional Budget Office estimates below.

In compliance with clause 7(a) of rule XIII and clause 2(l)(3) (B) and (C) of rule XI of the Rules of the House of Representatives, the Committee agrees with the cost estimates furnished by the Congressional Budget Office on H.R. 3 and are included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 6, 1987.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed Titles I, II, and VIII of H.R. 3, the Trade and International Economic Policy Reform Act of 1987, as ordered reported by the House Committee on Ways and Means on March 25, 1987. Because this cost estimate was prepared without final bill language, these estimates are preliminary and subject to change.

The bill includes provisions that would amend several sections of the Tariff Act of 1930 (P.L. 71-361), the Trade Act of 1974 (P.L. 93-618), and the Trade and Tariff Act of 1984 (P.L. 98-573) regarding unfair foreign trade practices and import relief; would grant the President additional authority to negotiate certain trade issues; and would clarify, suspend, or impose numerous tariffs and other related customs provisions. The bill also contains findings concerning the United States trade imbalance and establishes a policy to progressively reduce the trade deficit. The estimated budgetary effects of the bill are shown in Table 1.

TABLE 1.—ESTIMATED BUGETARY EFFECTS OF THE INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987, AS ORDERED REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991	1992
Estimated budget authority		53	53	42	40	40
Estimated authorization level		1	1	1	1	1
Estimated outlays		54	54	43	41	41
Estimated revenue effects (net)	−20	−124	−121	−121	−60	−40
Net increase in deficit	−20	−178	−175	−164	−101	−81

The revenue effects of proposals to change customs duties are net of changes in income and payroll taxes. These estimates assume a July 1, 1987 enactment date. The specific provisions and budget effects of each title are discussed below.

TITLE I

Title I of H.R. 3 would change the current Trade Adjustment Assistance program. The changes may be characterized as follows:

(1) A wage subsidy would be permitted for those who returned to work at substantially lower wages than their previous jobs had paid;

(2) Participation in training would be required (with certain exceptions) for receipt of cash benefits for workers affected by plant closings; and

(3) Training is made an entitlement that would be subject to a $4000 reimbursement limit per trainee.

(4) Petitions for trade adjustment assistance would be automatically certified for workers in industries for which the International Trade Commission (ITC) has made an affirmative decision with respect to injury caused by foreign competition.

The estimated budget impact of these changes is shown below:

COSTS FOR TRADE ADJUSTMENT ASSISTANCE PROVISIONS

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Wage supplements:					
Budget authority	31	32	30	30	31
Outlays	31	32	30	30	31
Cash benefits:					
Budget authority	5	6	1	0	0
Outlays	5	6	1	0	0
Training:					
Budget authority	17	15	11	10	9
Outlays	17	15	11	10	9
Total:					
Budget authority	53	53	42	40	40
Outlays	53	53	42	40	40

Wage Supplement Option. The wage supplement option would permit individuals to receive up to 52 weeks of Trade Readjustment Allowance (TRA) benefits as a wage subsidy, but the maximum subsidy would be limited to 50 percent of the TRA cash benefit to which the individual would be eligible. The combination of the reemployment wage and the wage subsidy could not exceed 80 percent of the wage earned in the trade-impacted job. Three groups of individuals would be affected by this proposal—certified workers who never collect TRA benefits under current law, workers who would collect some TRA benefits but become reemployed at lower wages before exhausting benefits, and individuals who would be expected to exhaust their TRA benefits but who would now choose to be reemployed at lower wages. The first two of these groups are estimated to receive increased TRA payments under the proposed change, while the last group would receive less. The net effect on program outlays would be to increase cash benefits by about $31 million in 1988, $32 million in 1989, and $30 million in 1990.

There is considerable uncertainty surrounding these estimates as data were often not available to provide support for various assumptions required for the estimate. For example. there are no data on the proportion of TRA beneficiaries who might opt for the wage supplement provided under the proposed changes. The assumption used here is that one-quarter of those who would receive the wage supplement would choose lower-paying jobs instead of continued receipt of TRA benefits. A higher fraction would decrease program costs while a lower one would raise spending.

The CBO assumes that about two-thirds of all workers certified for TRA benefits never receive any TRA benefits, and most of these workers do not collect benefits because they have become reemployed before exhausting Unemployment Insurance (UI) benefits. If their reemployment is similar to displaced workers who are reemployed, about one-third would become reemployed at wages at least 20 percent lower than their previous earnings and the average decrease for these workers is about 45 percent. The average subsidy to these workers would be about 50 percent of the maximum allowed under the proposal. Assuming that two-thirds of these workers would apply for the wage supplementation, this group of workers is estimated to receive an additional $32 million, $33 million, and $31 million for fiscal years 1988–1990, respectively. The costs for TRA recipients who would receive some TRA benefits but would become reemployed at less than 80 percent of their previous wages before exhausting eligibility for TRA benefits, would total about $5 million in wage subsidies annually. For the final group, those who would be encouraged by the wage subsidy to forgo weekly TRA benefits and to accept lower paying employment, about $6 million in reduced outlays would result annually.

Training Link For Workers Affected by Plant Closings. Title I would also require, with certain exceptions, TRA beneficiaries who were unemployed through plant closings to participate in training as a condition for cash benefits. According to information provided by the Department of Labor (DOL) staff, perhaps 40 percent to 50 percent of workers covered under certifications are associated with plant closings. (Under CBO assumptions for 1988, 45 percent of TRA beneficiaries would amount to about 18,300 beneficiaries.) Assuming that about 20 percent of these beneficiaries would not participate if they were required to engage in training programs, and a similar proportion of the remainder would be deemed either as not likely to benefit from training or as not having the appropriate training available, about 64 percent of those unemployed through plant closings would receive full TRA benefits while in training programs. Of the 20 percent who choose not to enter into training, it is assumed that one-third would be reemployed at less than 80 percent of their previous wage, and two-thirds of these would apply for the wage supplement. Of the other 16 percent not in training, approximately 15 percent would be excused from the training requirement, and would receive the same benefits as they would receive under current law. The remaining one percent is assumed to opt for the wage subsidy.

Because beneficiaries in training programs receive benefits for a longer period than those receiving cash benefits only—the CBO assumes an average differential of about 12 weeks of benefits—the savings from the training requirement is more than offset by the higher benefits to those in training. In addition, because the current appropriation is assumed to be a constraint on the number of workers expected to be in training programs under current law particularly in 1988 and 1989, the provision making training an entitlement acts to raise cash benefits as more recipients would be assumed to participate in training. The net effect is to increase benefit payments by about $5 million in 1988, $6 million in 1989 and $1 million in 1990. Moreover, training costs rise by about $17 million in 1988, $15 million in 1989, and $11 million in 1990.

Workers who were laid off, rather than unemployed through a plant closing, would have the option of the wage supplement or current law benefits. These workers are assumed to constitute 55 percent of current law beneficiaries.

Automatic Certification for Workers in Certain Industries. Title I would provide for automatic certification of petitions from groups of workers in industries cited by the International Trade Commission (ITC) as injured by foreign competition. It is uncertain whether this action would increase TAA program costs or not. In the past, DOL has certified workers when the ITC has made an affirmative decision with regard to injuries from foreign competition. Moreover, workers in these affected industries are often certified for TAA benefits before the industry has been determined by the ITC as injured. Thus it is unclear as to the cost impact of the automatic certification provision. On the other hand, the provision could potentially increase program costs if the ITC were to determine injury for an industry for which the DOL has not been approving petitions for TAA certification.

Title I would further require the President to seek an international agreement to permit the imposition of an import fee to finance worker adjustment assistance programs. If negotiations are successful, a small uniform fee on imports would be imposed. CBO estimates that such a fee would have to increase annual revenues by roughly $200 million in order to cover the costs of the assistance programs.

Changes in Trade Law. Title I would also amend many provisions of existing trade law to strengthen the United States' position in international trade. The bill would amend section 301 of the Trade Act of 1974 regarding United States responses to certain unfair trade practices of foreign countries. The bill would transfer decision-making authority from the President to the United States Trade Representative (USTR) to determine if foreign trade practices are subject to section 301 criteria. If the USTR finds that a foreign country has violated a trade agreement, the President would be required to retaliate in an amount equal to the foreign restriction; the form of the retaliation would be at his discretion. Title I also sets forth extensive negotiating objectives, grants the President negotiating authority for specific trade agreements, and clarifies and strengthens additional functions of the USTR.

The bill would require the Secretary of the Treasury to determine whether any country that has an excessive trade surplus with the United States is maintaining its currency at an artificially low level. If an affirmative determination is made and negotiations are unsuccessful, the Secretary of the Treasury may impose an exchange rate equalization tariff to offset the effects of the low value of the foreign currency.

In addition, Title I would amend current countervailing and antidumping duty laws. Both the ITC and the Department of Commerce would have expanded responsibilities in investigating the occurrence of dumping and any resulting injuries. These additional requirements are expected to cost about $1 million annually. CBO does not expect the other activities required by Title I to result in significant additional costs to the federal government.

Under current law, antidumping and countervailing duties on imports that are used in the manufacture of products for export may be refunded upon the exportation of such goods. The bill would prohibit refunds under drawback provisions for antidumping and countervailing duties. In fiscal year 1986, total antidumping and countervailing duties collected were $96 million. No data, however, are available on the amount refunded from these duties because the U.S. Customs Service currently does not keep such records. The bill would also repeal the current exemption from antidumping and countervailing duties for United States government purchases. Due to the lack of data, CBO is unable to estimate at this time the revenue effects of these provisions relating to antidumping and countervailing duties.

Due to the indeterminate nature of the actions to be taken by the President, the USTR, the Secretary of the Treasury, and the ITC, CBO is unable to estimate any potential revenue effects of Title I. Customs duties collections could increase, decrease, or remain unchanged, depending on the measures taken.

TITLE II

Title II of H.R. 3 would require the USTR to investigate and report to the Congress on foreign barriers to competitive opportunities for United States firms in telecommunications markets. Once the investigation is completed, the President would be required to negotiate trade agreements that meet the USTR's objective for fair markets for telecommunications products and services. If no agreements are obtained, the President would be required to implement retaliatory trade actions authorized by the bill. Title II would also require the Secretary of Commerce to study the competitiveness of the United States domestic telecommunications industry. Based on information from the Department of Commerce, CBO estimates that the study would cost about $130,000. We do not expect the other activities required by Title II to result in significant additional costs to the federal government.

To the extent that an action taken by the President or the USTR would affect dutiable imports, it could cause an increase or decrease in customs duties collections. Because it is uncertain what measures would be taken, CBO is unable to estimate any potential revenue effects of Title II.

TITLE VIII

Title VIII of the bill contains over 70 miscellaneous tariff and customs provisions that would clarify, suspend, or impose tariffs on specific products. Some of these provisions would decrease customs duties collections; others would increase collections; some would have no revenue effects at all. Based on information obtained from the ITC, CBO estimates that Title VIII would decrease revenues by the following amounts.

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991	1992
Total revenue effects (net)	−20	−124	−121	−121	−60	−40

Enactment of this bill would not affect the budgets of state or local governments.

If you would like further information. you or your staff may wish to contact Neil Fisher of the Tax Analysis Division at 226-2720 or Michael Pogue of the Budget Analysis Division at 226-2820.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

INFLATIONARY IMPACT STATEMENT

With respect to clause (2)(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee states that the Committee amendments to H.R. 3, which would have a very modest revenue loss, would not have an inflationary impact on prices and costs in the operation of the general economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRADE ACT OF 1974

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

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CHAPTER 2—OTHER AUTHORITY

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SEC. 123. COMPENSATION AUTHORITY.

[(a) Whenever any action has been taken under section 203 to increase or impose any duty or other import restriction, the President—

[(1) may enter into trade agreements with foreign countries of instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

[(2) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement.

[(b)(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 70 percent of the existing rate of duty.

[(2) Where the rate of duty in effect at any time is an intermediate stage under section 109, the proclamation made pursuant to subsection (a) may provide for the reduction of each rate of duty at each such stage proclaimed under section 101 by not more than 30 percent of such rate of duty, and may provide for a final rate of duty which is not less than 70 percent of the rate of duty proclaimed as the final stage under section 101.

[(3) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

[(A) the difference between such limitation and the next lower whole number, or

[(B) one-half of 1 percent ad valorem.

[(4) Any concessions granted under subsection (a)(1) shall be reduced and terminated accordingly to substantially the same time schedule for reduction applicable to the relevent import relief under section 203(h).

[(c) Before entering into any trade agreement under this section with any foreign country or instrumentality, the President shall consider whether such country or instrumentality has violated trade concessions of benefit to the United States and such violation has not been adequately offset by the action of the United States or by such country or instrumentality.

[(d) Notwithstanding the provisions of subsection (a), the authority delegated under section 101 shall be used for the purpose of granting new concessions as compensation within the meaning of this section until such authority terminates.]

SEC. 123. COMPENSATION AUTHORITY.

(a) In General.—Whenever—

(1) any action taken under chapter 1 of title II or chapter 1 of title III;

(2) any Act of Congress enacted after the date of the enactment of the Trade and International Economic Policy Act of 1987; or

(3) any judicial or administrative tariff reclassification that becomes final after the date of the enactment of such Act of 1987;

increases or imposes any duty or other import restriction, the President—

(A) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

(B) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement; but only if the entering into of any such agreement is necessary or appropriate to meet the international obligations of the United States.

(b) Factors Considered Before Entering Into Agreement.—Before entering into any trade agreement under this section with any foreign country or instrumentality, the President shall consider whether such country or instrumentality has violated trade consessions of benefit to the United States and such violation has not been adequately offset by the action of the United States or by such country or instrumentality.

(c) Application of Section 112 Limitations.—Section 112 (b) and (c) apply to any modification of existing duties that is granted as a concession under this section.

(d) Reduction and Termination.—Any concession granted under subsection (a) shall be reduced and terminated according to a schedule that the President determines is substantially equivalent to the effect and duration of the action of the United States that gave rise to the concession.

* * * * * * *

SEC. 127. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.

(a) * * *

(b) While there is in effect with respect to any article any action taken under section [203] *204* of this Act, or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862 or 1981), the President shall reserve such article from negotiations under this title (and from any action under section 122(c)) contemplating reduction or elimination of—

(A) any duty on such article,

(B) any import restriction imposed under such section, or

(C) any other import restriction, the removal of which will be likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 131, 132, and 133 where applicable.

* * * * * * *

SEC. 129. NEGOTIATION OF CERTAIN MISCELLANEOUS TARIFF AGREEMENTS WITH THE GOVERNMENT OF CANADA.

(a) The President may, subject to the provisions of subsections (b), (c), and (d) of this section—

(1) enter into tariff agreements with the Government of Canada relating to the items listed in this section; and

(2) may proclaim the modification or elimination of any existing duty on these items as he deems appropriate to carry out such agreements.

(b) The President shall exercise his authority under this section only with respect to articles provided for in the following items of the Tariff Schedules of the United States (19 U.S.C. 1202):

(1) Frozen cranberries (provided for in item 146.71).

(2) Dialysis cyclers (provided for in item 709.17).

(3) Packaging goods for tea (described in headnote 2 to subpart A of part 11 of schedule 1).

(4) Dried fababeans (provided for in items 140.11 and 140.16).

(5) Cat litter (provided for in item 256.90 and 512.24).

(6) Mechanics tool boxes (provided for in item 706.62).

(7) Medical tubing (provided for in item 772.65).

(8) Synthetic fireplace materials (provided for in item 792.32).

(9) Spirits (provided for in item 169.21 and 169.22).

(10) Miners safety lamps, components, and battery chargers (provided for in items 683.80 and 682.60).

(11) Computerized paper cutter control retrofit units (provided for in item 685.90 and 676.15).

(c) The President shall exercise his authority to proclaim changes in existing duties under this section only to the extent that tariff concessions of approximately equivalent value are granted by the Government of Canada in exchange for reductions authorized under this section.

(d) The President may exercise the authority granted under this section only during the 5-year period beginning on the date of the enactment of this section.

* * * * * * *

Chapter 3—Hearings and Advice Concerning Negotiations

[SEC. 131. INTERNATIONAL TRADE COMMISSIONS ADVICE.

[(a) In connection with any proposed trade agreement under chapter 1 or section 123 or 124, the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the "Commission") with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this title pursuant to which such consideration may be given.

[(b) Within 6 months after receipt of such a list or, in the case of a list submitted in connection with a trade agreement authorized under section 123, within 90 days after receipt of such list, the Commission shall advise the President with respect to each article of its judgment as to the probable economic effect of modifications of duties on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States manufacturing, agriculture, mining, fishing, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period than the minimum periods provided by section 109(a).

[(c) In addition, in order to assist the President in his determination of whether to enter into any agreement under section 102, the Commission shall make such investigations and reports as may be requested by the President, including, where feasible, advice as to the probable economic effects of modifications of any barrier to (or other distortion of) international trade on domestic industries and purchasers and on prices and quantities of articles in the United States.

[(d) In preparing its advice to the President under this section, the Commission shall, to the extent practicable—

[(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles in question and the domestic industries producing the like or directly competitive articles;

[(2) analyze the production, trade, and consumption of each like or directly competitive article, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

[(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned which it believes such modifications would cause; and

[(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, and consumers, utilizing to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

[(e) In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

[SEC. 132. ADVICE FROM DEPARTMENTS AND OTHER SOURCES.

[Before any trade agreement is entered into under chapter 1 or section 123 or 124, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate.

[SEC 133. PUBLIC HEARINGS.

[(a) In connection with any proposed trade agreement under chapter 1 or section 123 or 124, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published pursuant to section 131, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings.

[(b) The organization holding such hearings shall furnish the President with a summary thereof.

[SEC 134. PREREQUISITES FOR OFFERS.

[In any negotiations seeking an agreement under chapter 1 or section 123 or 124, the President may make an offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restriction, or other barrier to (or other distortion of) international trade, with respect to any article only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the International Trade Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.]

SEC. 131. ADVICE FROM INTERNATIONAL TRADE COMMISSION.

(a) Lists of Articles Which May Be Considered for—

(1) In connection with any proposed trade agreement under section 123 of this Act or section 112 of the Trade and International Economic Policy Act of 1987, the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the "Commission") with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

(2) In connection with any proposed trade agreement under section 113 of the Trade and International Economic Policy Act of 1987, the President may from time to time publish and furnish the Commission with lists of non-tariff matters which may be considered for modification.

(b) Advice To President by Commission.—Within 6 months after receipt of a list under subsection (a) or, in the case of a list submitted in connection with a trade agreement authorized under section 133, within 90 days after receipt of such lists, the Commission shall advise the President, with respect to each article or non-tariff matter, of its judgment as to the probable economic effect of modification of the tariff or non-tariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgement as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the minimum period provided for in section 112(c)(2).

(c) Additional Investigations and Reports Requested by the President or the Trade Representative.—In addition, in order to assist the President in his determination whether to enter into any agreement under this title or section 112 or 113 of the Trade and International Economic Policy Act of 1987, or how to develop trade policy, priorities or other matters (such as priorities for actions to improve opportunities in foreign markets), the Commission shall make such investigations and reports as may be requested by the President on matters such as effects of modification of any barrier to (or other distortion of) international trade on domestic workers, industries or sectors, purchasers, prices and quantities of articles in the United States.

(d) Commission Steps in Preparing its Advice to the President.—In preparing its advice to the President under this section, the Commission shall to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles in question and the domestic industries producing the like or directly competitive articles or services;

(2) analyze the production, trade, and consumption of each like or directly competitive article, or service taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities; the overall impact of such or other possible changes on the competitiveness of relevant domestic industries or sectors; and such other conditions as it deems relevant in the domestic industries or sectors concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supply countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, consumers, services, intellectual property and investment, using to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

(e) Public Hearing.—In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

SEC. 132. ADVICE FROM EXECUTIVE DEPARTMENTS AND OTHER SOURCES.

Before any trade agreement is entered into under section 123 of this Act or section 112 or 113 of the Trade and International Economic Policy Act of 1987, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate. Such advice shall be prepared and presented consistent with the provisions of Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188.

SEC. 133. PUBLIC HEARINGS.

(a) Opportunity for Presentation of Views.—In connection with any proposed trade agreement under section 123 of this Act or section 112 or 113 of the Trade Policy and International Economic Policy Act of 1987, the President shall afford an opportunity of any interested person to present his views concerning any article on a list published under section 131, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate any agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings. When appropriate, such procedures shall apply to the development of trade policy and priorities.

(b) S*UMMARY OF* H*EARINGS.—The organization holding such hearing shall furnish the President with a summary thereof.*

SEC. 134. PREREQUISITES FOR OFFERS.

In any negotiation seeking an agreement under section 123 of this Act or section 112 or 113 of the Trade and International Economic Policy Act of 1987, the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this title, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

[SEC. 135. ADVICE FROM PRIVATE OR PUBLIC SECTOR.

[(a) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to negotiating objectives and bargaining positions before entering into a trade agreement referred to in section 101 or 102, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the administration of the trade policy of the United States.

[(b)(1) The President shall establish an Advisory Committee for Trade Negotiations to provide overall policy advice on matters referred to in subsection (a). The Committee shall be composed of not more than 45 individuals, and shall include representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public.

[(2) The Committee shall meet at the call of the United States Trade Representative. The Chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the President for a period of 2 years and may be reappointed for one or more additional periods.

[(3) The United States Trade Representative shall make available to the Committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

[(c)(1) The President may, on his own initiative, or at the request of organizations representing industry, labor, agriculture, or services, establish general policy advisory committees for industry, labor, agriculture, or services, respectively, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, and service interests, respectively, including small business interests, and shall be organized by the United State Trade Representative and the Secretary of Commerce, Labor, or Agriculture, as appropriate.

[(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agriculture, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees the United States Trade Representative and the Secretary of Commerce, Labor, or Agriculture, as appropriate, (A) shall consult with interested private organizations, and (B) shall take into account such factors as patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade, the character of the nontariff barriers and other distortions affecting such competition, the necessity for reasonable limits on the number of such advisory committees, the necessity that each committee be reasonably limited in size, and that, in the case of each sectoral committee, the product lines covered by each committee be reasonably related.

[(3) The President—

[(A) may establish policy committees representing non-Federal governmental interests to provide, where the President finds it necessary, policy advice—

[(i) on matters referred to in subsection (a), and

[(ii) with respect to implementation of trade agreements, and

[(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

[(d) Committees established under subsection (c) shall meet at the call of the United States Trade Representative and the Secretary of Agriculture, Commerce, or Labor, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

[(e) The Advisory Committee for Trade Negotiations, each appropriate policy advisory committee, and each sector or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under this Act, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. The report of the Advisory Committee for Trade Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interest of the United States and the report of the appropriate sector or functional area committee shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

[(f) The provisions of the Federal Advisory Committee Act (Public Law 92-463) shall apply—

[(1) to the Advisory Committee for Trade Negotiations established pursuant to subsection (b); and

[(2) to all other advisory committees which may be established pursuant to subsection (c); except that the meetings of advisory committees established under subsection (c) shall be exempt from the requirements of subsections (a) and (b) of section 10 and section 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously comprise the Government's negotiating objectives or bargaining positions with respect to matters referred to in subsection (a).

[(g)(1)(A) Trade secrets and commercial or financial information which is privileged or confidential, submitted in confidence by the private or non-Federal government sector to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to

[(i) officers and employees of the United States designated by the United States Trade Representative, and

[(ii) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are accredited as official advisers under section 161 (a) or are designated by the chairman of either such committee under section 161 (b)(2), and members of the staff of either such committee designated by the chairman under section 161(b)(2), for use in connection with negotiation of matters referred to in subsection (a).

[(B) Information, other than that described in paragraph (A), and advice submitted in confidence by the private or non-Federal government sector to officers or employees of the United States, to the Advisory Committee for Trade Negotiations or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a), shall not be disclosed to any person other than—

[(i) the individuals described in subparagraph (A), and

[(ii) the appropriate advisory committees established under this section.

[(2) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Negotiations, or to any advisory committee established under subsection (c), shall not be disclosed other than in accordance with rules issued by the United States Trade Representative and the Secretary of Commerce, Labor or Agriculture, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

[(h) The United States Trade Representative, and the Secretary of Commerce, Labor, or Agriculture, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established pursuant to subsection (c) as such committees may reasonably require to carry out their activities.

[(i) It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretary of Commerce, Labor, or Agriculture, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established pursuant to subsection (c) on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to (1) significant issues and developments, and (2) overall negotiating objectives and positions of the United States and other parties with respect to matters referred to in subsection (a). The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees but the United States Trade Representative shall inform the advisory committees of failures to accept such advice or recommendations, and the President shall include in his statement to the Congress, required by section 163, a report by the United States Trade Representative on consultation with such committees, issues involved in such consultation, and the reasons for not accepting advice or recommendations.

[(j) In addition to any advisory committee established pursuant to this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal and, if such information is submitted under the provisions of subsection (g), confidential basis by private on non-Federal government organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data, and other trade information, as well as policy recommendations pertinent to the negotiation of any matters referred to in subsection (a).

[(k) Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other approprate parties, shall be informed and consulted before and during any such negotiations and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate, but may not speak or negotiate for the United States.

[(l) The provisions of title XVIII of the Food and Agriculture Act of 1977 shall not apply to an advisory committee established under subsection (c).

[(m) NON-FEDERAL GOVERNMENT DEFINED.—The term "non-Federal government" means—

[(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

[(2) any agency or instrumentality of any entity described in paragraph (1).]

SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.

(a) IN GENERAL.—

(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this title or section 112 or 113 of the Trade and International Economic Policy Act of 1987;

(B) the operation of any trade agreement once entered into; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188, and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector on the overall current trade policy of the United States. The consultation shall include, but are not limited to, the following elements of such policy:

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolutions of trade disputes.

(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.

(D) Important developments in other areas of trade for which there must be developed a proper policy response.

(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

(b) ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS.—

(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a). The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Members of the committee shall be nominated by the United

States Trade Representative and appointed by the President. The term of appointment is 2 years. An individual may be reappointed to committee for any number of terms. The appointments made to the committee must reflect a balance between the political parties.

(2) The committee shall meet not less than quarterly, and at any time at the call of the United States Trade Representative or at the call of two-thirds of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative service and assistance as it may reasonably require to carry out its activities.

(c) GENERAL POLICY, SECTORAL, OR FUNCTIONAL ADVISORY COMMITTEES.—

(1) The President may, on his own initiative, or at the request of organizations representing industry, labor, agriculture or services, establish general policy advisory committees for industry, labor, agriculture, or services, respectively, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, and service interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, or other executive departments, as appropriate. Individual policy advisory committees should be established for services, investment, agriculture, defense, industry and labor. The members of such committees shall be appointed by the United States Trade Representatives in consultation with such Secretaries.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture or other executive departments, as appropriate, shall—

(A) consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

(3) The President—

(A) may establish policy advisory committees representing non-Federal governmental interests to provide, if the President finds it necessary, policy advice—

(i) on matters referred to in subsection (a), and

(ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal gvernmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representatives with such representatives.

(d) Policy, Techncial, and Other Advise and Information.—Committees established under subsection (c) shall meet at the call of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other executive departments, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e) Meeting of Advisory Committees at Conclusion of Negotiations.—

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under this title or section 112 or 113 of the Trade and International Economic Policy Act of 1987, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report, if it applies to a trade agreement entered into under section 102 of this Act or section 13 of such Act of 1987, shall be provided under the preceding sentence not later than the date on which the draft of the implementing bill for agreement is submitted to Congress under section 102(e) of this Act or section 114(b) of such Act of 1987, as the case may be.

(2) The report of the Advisory Committee for Trade Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the overall and principal negotiating objectives set forth in this title or section 111 of the Trade Policy and International Economic Policy Act of 1987, as appropriate.

(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) Application of Federal Advisory Committee Act.—The provisions of the Federal Advisory Committee Act applies—

(1) to the Advisory Committee for Trade Policy and Negotiations established under subparagraph (b); and

(2) to all other advisory committees which may be established under section (c); except that the meetings of advisory committees established under subsections (b) and (c) shall be exempt from the requirements of subsections (a) and (b) of sections 10

and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the Government's development of trade policy, priorities, negotiating objectives or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section.

(g) Trade Secrets and Confidential Information.—

(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to—

(A) officers and employees of the United States designated by the United States Trade Representative; and

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 161 or are designated by the chairmen of either such committee under section 161(b)(2), members accredited under section 161(a)(2), and members of the staff of either such committee designated by the chairmen under section 161(b)(2);

for use in connection with matters referred to in subsection (a).

(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United States, to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a) shall not be disclosed to any person other than—

(A) the individuals described in paragraph (1); and

(B) the appropriate advisory committee established under this section.

(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), shall not be disclosed other than in accordance with rules issued by the United States Trade Representative and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent

feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

(h) Advisory Committee Support.—The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established under subsection (c) as such committees may reasonably require to carry out their activities.

(i) Consultation With Advisory Committees; Procedures; Nonacceptance of Committee Advice or Recommendations.—It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to—

(1) significant issues and developments; and

(2) overall negotiating objectives and positions of the United States and other parties;

with respect to matters referred to in subsection (a). The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this title, information on the advice and information provided by advisory committees shall be made available to congressional advisers.

(j) Private Organizations or Groups.—In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g), on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a).

(k) Scope of Participation by Members of Advisory Committee.—Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such negotiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

(l) Advisory Committee Established by Department of Agriculture.—The provisions of title XVIII of the Food and Agricul-

ture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c).

(m) NON-FEDERAL GOVERNMENT DEFINED.—The term "non-Federal government means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

(2) any agency or instrumentality of any entity described in paragraph (1).

* * * * * * *

CHAPTER 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

(a) * * *

* * * * * * *

[(c)(1) The United States Trade Representative shall—

[(A) be the chief representative of the United States for each trade negotiation under this title of section 301;

[(B) report directly to the President and the Congress, and be responsible to the President and the Congress for the administration of trade agreements programs under this Act, the Trade Expansion Act of 1962, and section 350 of the Tariff Act of 1930;

[(C) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements program;

[(D) be responsible for making reports to Congress with respect to the matter set forth in subparagraphs (A) and (B);

[(E) be chairman of the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962; and

[(F) be responsible for such other functions as the President may direct.]

(c)(1) The United States Trade Representative shall—

(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

(B) serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations in which the United States participates;

(D) issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

(E) act as the principal spokesman of the President on international trade;

(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, trade agreements programs;

(G) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

(H) be responsible for making reports to Congress with respect to matters referred to in subparagraphs (C) and (F);

(I) be chairman of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and shall consult with and be advised by such organization in the performance of his functions; and

(J) in addition to those functions that are delegated to the United States Trade Representatives as of the date of the enactment of the Trade and International Economic Policy Reform Act of 1987, be responsible for such other functions as the President may direct.

(2) It is the sense of Congress that the United States Trade Representative should—

(A) be the senior representative on any body that the President may establish for the purpose of providing to the President advice on overall economic policies in which international trade matters predominate; and

(B) be included as a participant in all economic summit and other international meetings at which international trade is a major topic.

[(2)] *(3)* The United States Trade Representative may—

(A) delegate any of his functions, powers, and duties to such officers and employees of the Office as he may designate; and

(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as he may deem appropriate.

[(3)]*(4)* Each Deputy United States Trade Representative shall have as his principal function the conduct of trade negotiations under this Act and shall have such other functions as the Representative may direct.

* * * * * * *

(f)(1) There is established in the Office an Office of Unfair Trade Practices (hereinafter in this subsection referred to as the "Practices Office").

(2) The functions of the Practices Office are as follows:

(A) The coordination of the application of interagency resources to specific unfair trade practice cases.

(B) The preparation of the annual report on foreign trade barriers required under section 181(b).

(C) The identification, and referral to the appropriate administering authority for consideration with respect to action, of each act, policy, or practice in the report required under section 181(b), or otherwise known to the Office on the basis of other available information, that either—

(i) is considered to be inconsistent with the provisions of any trade agreement and has a significant adverse impact on United States commerce; or

(ii) has a significant adverse impact on domestic firms or industries that are either too small or financially weak to initiate proceedings under the trade laws.

(D) The submission of an annual report to the Committee on Ways and Means and the Committee on Finance describing each referral made to an administering authority under subparagraph (C) and any action taken on the referral.

(E) The identification of practices having a significant adverse impact on United States commerce that the attainment of United States negotiating objective would eliminate.

(F) The identification, on a biennial basis, of those United States Government policies and practices that, if engaged in by a foreign government, might constitute and act, policy, or practice.

(3) In performing its functions under paragraph (2) the Practices Office shall be assisted by an interagency unfair trade practices advisory committee composed of the Trade Representative, who shall chair the committee, and senior representatives of the following agencies, appointed by the respective heads of those agencies:

(A) The Bureau of Economic and Business Affairs of the Department of State.

(B) The United States and Foreign Commercial Services of the Department of Commerce.

(C) The International Trade Administration (other than the United States and Foreign Commercial Service) of the Department of Commerce.

(D) The Foreign Agricultural Service of the Department of Agriculture.

(4) For purposes of this subsection, the term 'act, policy, or practice' includes any act, policy or practice that—

(A) may be a subsidy with respect to which countervailing duties may be imposed under subtitle A of title VII;

(B) may result in the sale or likely sale of foreign merchandise with respect to which antidumping duties may be imposed under subtitle B of title VII;

(C) is either an unfair method of competition, or an unfair act in the importation of articles into the United States, that is unlawful under section 337; or

(D) is an act, policy, or practice of a kind with respect to which action may be taken under title III of the Trade Act of 1974.

[(f)]*(g)*(1) There are authorized to be appropriated to the Office for the purpose of carrying out its functions $13,582,000 for fiscal year 1986; of which not to exceed $80,000 may be used for entertainment and representation expenses.

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay

rate changes made in accordance with the Federal Pay Comparability Act of 1970.

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CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.

(a) * * *

* * * * * * *

(b) DEFINITIONS.—For purposes of this section—

(1) The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements submitted to the House of Representatives and the Senate under **[**section 102**]** *section 102 of this Act or section 114 of the Trade and International Economic Policy Reform Act of 1987* and which contains—

(A) a provision approving such trade agreement or agreement,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreements or agreements, either repealing or amending existing laws or providing new statutory authority.

* * * * * * *

(c) INTRODUCTION AND REFERRAL.—

(1) On the day on which a trade agreement is submitted to the House of Representatives and the Senate under **[**section 102**]** *section 102 of this Act or section 114 of the Trade and International Economic Policy Reform Act of 1987,* the implementing bill submitted by the President with respect to such trade agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement is submitted, the implementing bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. Such bills shall be referred by the Presiding Officer of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more

committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

* * * * * * *

SEC. 152. RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.

(a) CONTENTS OF RESOLUTIONS.—

(1) For purposes of this section, the term "resolution" means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on ———.", the blank space being filled with the appropriate date; **[**and**]**

(B) a resolution of either House of the Congress, the matter after the resolution clause of which is as follows: "That the ——— does not approve ——— transmitted to the Congress on ———.", with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with paragraph (2), and the third blank space being filled with the appropriate date**[**.**]**; *and*

(C) a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the waiver (under section 311 of the Trade Act of 1974) described in the document transmitted to Congress on ———.", the blank space being filled with the appropriate date.

* * * * * * *

CHAPTER 6—CONGRESSIONAL LIAISON AND REPORTS

[SEC. 161. CONGRESSIONAL DELEGATES TO NEGOTIATIONS.

[(a) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendations of the chairman of the Committee on Ways and Means, shall select five members (not more than three of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select five members (not more than three of whom are members of the same political party) of such committee, who shall be accredited by the President as official advisers to the United States delegation to international conferences, meetings, and negotiation sessions relating to trade agreements.

[(b)(1) The United States Trade Representative shall keep each official adviser currently informed on United States negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

[(2) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisors under subsection (a)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

[SEC. 162. TRANSMISSION OF AGREEMENTS TO CONGRESS.

[(a) As soon as practicable after a trade agreement entered into under chapter 1 or section 123 or 124 has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in light of the advice of the International Trade Commission under section 131(b), if any, and of other relevant considerations, of his reasons for entering into the agreement.

[(b) The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a). For purposes of this subsection, the term "Member" includes any Delegate or Resident Commissioner.]

SEC. 161. CONGRESSIONAL ADVISERS FOR TRADE POLICY AND NEGOTIATIONS.

(a) SELECTION.—

(1) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, who shall be designated congressional advisers on trade policy and negotiations. They shall provide advice on the development of trade policy and priorities for the implementation thereof. They shall also be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

(2) In addition to the advisers designated under paragraph (1), the United States Trade Representative may accredit additional members of the House and the Senate as advisers for specific policy matters or negotiations. Before granting accreditation under this paragraph, the Trade Representative shall consult with—

(A) the chairmen and ranking minority members of the Committee on Ways and Means and the Committee on Finance; and

(B) the chairmen and ranking minority members of any other committee of the House and Senate and each joint committee of the Congress, which the chairmen of the Committees on Ways and Means and Finance advise as having jurisdiction over legislation likely to be affected by such policy matters or negotiations.

(b) Briefing; Extra Delegates.—

(1) The United States Trade Representative shall keep each official adviser currently informed on matters affecting the trade policy of the United States and, with respect to possible agreements, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

(c) Committee Consultation.—The United States Trade Representative shall consult not less than quarterly with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the development, implementation, and administration of overall trade policy of the United States. Such consultations shall include, but are not limited to, the following elements of such policy:

(1) The principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement.

(2) The implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolutions of trade disputes.

(3) The actions taken, and proposed to be taken, under the trade laws of the United States and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives.

(4) The important developments and issues in other areas of trade for which there must be developed proper policy response.

When necessary, meetings shall be held with each Committee in executive session to review matters under negotiation.

SEC. 162. TRANSMISSION OF AGREEMENTS TO CONGRESS.

(a) Submission of Copy and Reasons.—As soon as practicable after a trade agreement entered into under this title or section 112 or 113 of the Trade and International Economic Policy Act of 1987 has entered into force with respect to the United States, the United States Trade Representative on behalf of the President shall, if he has not previously done so, transmit to each House of the Congress a copy of such trade agreement. He shall transmit with such agreement a statement containing—

(1) the reasons for entering into the agreement in the light of the advice, if any, of the International Trade Commission under section 131(b) and of any other relevant considerations;

(2) a description of the consultations regarding the agreement under section 135(i) between the United States Trade Representative and the advisory committees established under section 135(c) and if any advice or recommendation of any such committee was not accepted, the reasons therefor; and

(3) an explanation of how the agreement will enhance the international trade competitiveness of the United States,

expand export opportunities, establish equitable trade patterns, and further the overall trade policy of the United States.

(b) Submission to Each Member.—The United States Trade Representative, on behalf of the President, shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a). For purposes of this subsection, the term "Member" includes any Delegate or Resident Commissioner.

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Chapter 8—Barriers to Market Access

SEC. 181. ACTIONS CONCERNING BARRIERS TO MARKET ACCESS.

(a) * * *

(b) Report to Congress.—

(1) In general.—On or before the date which is one year after the date of the enactment of the International Trade and Investment Act, and each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) to the Committee on Finance of the Senate and to the Committee on Ways and Means *and the Committee on Foreign Affairs* of the House of Representatives.

* * * * * * *

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

Chapter 1—Import Relief

[SEC. 201. INVESTIGATION BY INTERNATIONAL TRADE COMMISSION.

[(a)(1) A petition for eligibility for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the International Trade Commission (hereinafter in this chapter referred to as the "Commission") by an entirety, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The petition shall include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition.

[(2) Whenever a petition is filed under this subsection, the Commission shall transmit a copy thereof to the United States Trade Representative and the agencies directly concerned.

[(b)(1) Upon the request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

[(2) In making its determinations under paragraph (1), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

[(A) with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry;

[(B) with respect to threat of serious injury, a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned;

[(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers; and

[(D) the presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) shall not necessarily be dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

[(3) For purposes of paragraph (1), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

[(A) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production,

[(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article, and

[(C) may, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

[(4) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

[(5) In the course of any proceeding under this subsection, the Commission shall, for the purpose of assisting the President in making his determinations under sections 202 and 203, investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports.

[(6) In the course of any proceeding under this subsection, the Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation; and, whenever in the course of its investigation the

Commission has reason to believe that the inceased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

[(7) For purposes of this section, the term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

[(c) In the course of any proceeding under subsection (b), the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

[(d)(1) The Commission shall report to the President its findings under subsection (b), and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds with respect to any article, as a result of its investigation, the serious injury or threat thereof described in subsection (b), it shall—

> [(A) find the amount of the increase in, or imposition of, any duty or import restriction on such article which is necessary to prevent or remedy such injury, or
>
> [(B) if it determines that adjustment assistance under chapters 2, 3, and 4 can effectively remedy such injury, recommend the provision of such assistance,

and shall include such findings or recommendation in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which were submitted in connection with each investigation.

[(2) The report of the Commission of its determination under subsection (b) shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

[(e) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this section, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

[(f)(1) Any investigation by the Commission under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act) which is in progress immediately before such date of enactment shall be continued under this section in the same manner as if the investigation had been instituted originally under the provisions of this section. For purposes of subsection (d) (2), the petition for any investigation to which the preceding sentence applies shall be treated as having been filed, or the request or resolution as having been received or the motion having been adopted, as the case may be, on the date of the enactment of this Act.

[(2) If, on the date of the enactment of this Act, the President has not taken any action with respect to any report of the Commission containing and affirmative determination resulting from an investigation under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act), such report shall be treated by the President as a report received by him under this section on the date of the enactment of this Act.

[SEC. 202. PRESIDENTIAL ACTION AFTER INVESTIGATIONS.

[(a) After receiving a report from the Commission containing an affirmative finding under section 201(b) that increased imports have been a substantial cause of serious injury or the threat thereof with respect to an industry, the President—

[(1)(A) shall provide import relief for such industry pursuant to section 203, unless he determines that provision of such relief is not in the national economic interest of the United States, and

[(B) shall evaluate the extent to which adjustment assistance has been made available (or can be made available) under chapter 2, 3, and 4 of this title to the workers and firms in such industry and to the communities in which such workers and firms are located, and, after such evaluation, may direct the Secretary of Labor and the Secretary of Commerce that expeditious consideration be give to the petitions for adjustment assistance; or

[(2) if the Commission, under section 201(d), recommends the provision of adjustment assistance, shall direct the Secretaries of Labor and Commerce as described in paragraph (1)(B).

[(b) Within 60 days (30 days in the case of a supplemental report under subsection (d)) after receiving a report from the Commission containing an affirmative finding under section 201(b) (or a finding under section 201(b) which he considers to be an affirmative finding, by reason of section 330(d) of the Tariff Act of 1930, within such 60-day (or 30-day) period), the President shall—

[(1) determine what method and amount of import relief he will provide, or determine that the provision of such relief is not in the national economic interest of the United States, and whether he will direct expeditious consideration of adjustment assistance petitions, and publish in the Federal Register that he has made such determination; or

[(2) if such report recommends the provision of adjustment assistance, publish in the Federal Register his order to the Secretary of Labor and Secretary of Commerce for expeditious consideration of petitions.

[(c) In determining whether to provide import relief and what method and amount of import relief he will provide pursuant to section 203, the President shall take into account, in addition to such other considerations as he may deem relevant—

[(1) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 2 or benefits from other manpower programs;

[(2) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapters 3 and 4;

[(3) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relative to the position of the industry in the Nation's economy;

[(4) the effect of import relief on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

[(5) the effect of import relief on the international economic interests of the United States;

[(6) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

[(7) the geographic concentration of imported products marketed in the United States;

[(8) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

[(9) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

[(d) The President may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 201(b) with respect to an industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report.

[SEC. 203. IMPORT RELIEF.

[(a) If the President determines to provide import relief under section 202(a)(1), he shall, to the extent that and for such time (not to exceed 5 years) as he determines necessary taking into account the considerations specified in section 202(c) to prevent or remedy serious injury or the threat thereof to the industry in question and to facilitate the orderly adjustment to new competitive conditions by the industry in question—

[(1) proclaim an increase in, or imposition of, any duty on the article causing or threatening to cause serious injury to such industry;

[(2) proclaim a tariff-rate quota on such article;

[(3) proclaim a modification of, or imposition of, any quantitative restriction on the import into the United States of such article;

[(4) negotiate, conclude, and carry out orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; or

[(5) take any combination of such actions.

[(b)(1) On the day the President determines under section 202 to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement, the President shall transmit to Congress a document setting forth the action he is taking under this section. If the action taken by the President differs from the action recommended to him by the Commission under section 201(d)(1)(A), he shall state the reason for such difference.

[(2) On the day on which the President determines that the provision of import relief is not in the national economic interest of the United States, the President shall transmit to Congress a document setting forth such determination and the reasons why, in terms of the national economic interest, he is not providing import relief and also what other steps he is taking, beyond adjustment assistance programs immediately available to help the industry to overcome serious injury and the workers to find productive employment.

[(3) On the day on which the President proclaims any import relief under this section not reported pursuant to paragraph (1), he shall transmit to Congress a document setting forth the action he is taking and the reasons therefor.

[(c)(1) If the President reports under subsection (b) that he is taking action which differs from the action recommended by the Commission under section 201(d)(1)(A), or that he will not provide import relief, the action recommended by the Commission shall take effect (as provided in paragraph (2)) upon enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b) is transmitted to the Congress.

[(2) If the contingency set forth in paragraph (1) occurs, the President shall (within 30 days after the enactment of the joint resolution referred to in paragraph (1) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was recommended by the Commission under section 201(d).

[(d)(1) No proclamation pursuant to subsection (a) or (c) shall be made increasing a rate of duty to (or imposing) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time of the proclamation.

[(2) Any quantitative restriction proclaimed pursuant to subsection (a) or (c) and any orderly marketing agreement negotiated pursuant to subsection (a) shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period which the President determines is representative of imports of such article.

[(e)(1) Import relief under this section shall be proclaimed and take effect within 15 days after the import relief determination date unless the President announces on such date his intention to negotiate one or more orderly marketing agreements under subsection (a) (4) or (5) in which case import relief shall be proclaimed and take effect within 90 days after the import relief determination date.

[(2) If the President provides import relief under subsection (a) (1), (2), (3), or (5), he may, after such relief takes effect, negotiate orderly marketing agreements with foreign countries and may, after such agreements take effect, suspend or terminate, in whole or in part, such import relief.

[(3) If the President negotiates an orderly marketing agreement under subsection (a) (4) or (5) and such agreement does not continue to be effective, he may, consistent with the limitations contained in subsection (h), provide import relief under subsection (a).

[(4) For purposes of this subsection, the term "import relief determination date" means the date of the President's determination under section 202(b).

[(f)(1) For purposes of subsections (a) and (c), the suspension of item 806.30 or 807.00 of the Tariff Schedules of the United States with respect to an article shall be treated as an increase in duty.

[(2) For purposes of subsections (a) and (c), the suspension of the designation of any article as an eligible article for purposes of title V shall be treated as an increase in duty.

[(3) No proclamation providing for a suspension referred to in paragraph (1) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the application of item 806.30 or item 807.00.

[(4) No proclamation which provides solely for a suspension referred to in paragraph (2) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the designation of the article as an eligible article for the purposes of title V.

[(g)(1) The President shall by regulations provide for the efficient and fair administration of any restriction proclaimed pursuant to this section.

[(2) In order to carry out an agreement concluded under subsection (a)(4), (a)(5), (e)(2), or (e)(3), the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement concluded under subsection (a)(4), (a)(5), (e)(2), or (e)(3) with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a major geographic area of the United States, the President is authorized to issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

[(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

[(h)(1) Any import relief provided pursuant to this section shall, unless renewed pursuant to paragraph (3), terminate no later than the close of the day which is 5 years after the day on which import relief with respect to the article in question first took effect pursuant to this section.

[(2) To the extent feasible, any import relief provided pursuant to this section for a period of more than 3 years shall be phased down during the period of such relief, with the first reduction of relief taking effect no later than the close of the day which is 3 years after the day on which such relief first took effect.

[(3) Any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, for one period of not more than 3 years if the President determines, after taking into account the advice received from the Commission under subsection (i)(2) or (i)(3) and after taking into account the considerations described in section 202(c), that such extension is in the national interest.

[(4) Any import relief provided pursuant to this section may be reduced or terminated by the President when he determines, after taking into account the advice received from the Commission under subsection (i)(2) or (i)(3) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest.

[(5) For purposes of this subsection and subsection (i), the import relief provided in the case of an orderly marketing agreement shall be the level of relief contemplated by such agreement.

[(i)(1) So long as any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to adjust to import competition) and upon request of the President shall make reports to the President concerning such developments.

[(2) Upon request of the President or upon its own motion, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief provided pursuant to this section.

[(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any important relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 is to terminate by reason of the expiration of the initial period therefor, the Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.

[(4) In advising the President under paragraph (2) or (3) as to the probable economic effect on the industry concerned, the Commission shall take into account all economic factors which it considers relevant, including the consideration set forth in section 202(c) and the progress and specific efforts made by the industry concerned to adjust to import competition.

[(5) Advice by the Commission under paragraph (2) or (3) shall be given on the basis of an investigation during the course of which the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

[(j) No investigation for the purposes of section 201 shall be made with respect to an article which has received import relief under this section unless 2 years have elapsed since the last day on which import relief was provided with respect to such article pursuant to this section.

[(k)(1) Actions by the President pursuant to this section may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

[(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 201(b)(3)(C), then the President shall take into account the geographic concentration of domestic production and of imports in that area in providing import relief, if any, which may include actions authorized under paragraph (1).]

SEC. 201. PETITIONS FOR RELIEF.

(a) IN GENERAL.—

(1) A petition for eligibility for import relief for the purpose of enhancing the long-term competitiveness, or otherwise facilitating the orderly adjustment to import competition, of a domestic industry may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of the industry.

(2) A petition filed under paragraph (1)—

(A) shall include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition;

(B) if critical circumstances are alleged to exist, shall include information supporting that allegation; and

(C) if injury caused by imports of a perishable agricultural product is alleged, may request, subject to section 202(b)(2), emergency relief under section 202(c).

(3) Whenever a petition is filed under paragraph (1), the Commission shall promptly transmit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

(b) STATEMENT OF PROPOSED ADJUSTMENT MEASURES.—

(1) A petitioner under subsection (a) (and any other member of the domestic industry that wishes to join with the petitioner) may submit to the Commission and the Trade Representative, either with the petition or at any time within 120 days after the date of filing of the petition, a statement which should include, to the extent practicable, the following:

(A) An assessment of the current problems affecting the ability of the domestic industry to compete with imports.

(B) Recommendations regarding the types of actions that both workers and firms within the industry could undertake, during a period when import relief is provided under this chapter—

(i) to improve the ability of the industry to compete on its own after such relief terminates; or

(ii) if long-term competitiveness is not the primary objective, to facilitate orderly adjustment to increased import competition.

(C) Recommendations regarding the types of actions that Federal agencies could take to assist the efforts of the domestic industry either to enhance its competitiveness or to adjust to import competition.

(D) An explanation regarding how import relief will assist the industry in enhancing competitiveness or achieving adjustment.

(2)(A) Before submitting a statement under paragraph (1), the petitioner may consult with the Trade Representative, the officers and employees of other Federal agencies considered appropriate by the Trade Representative, and members of the domestic industry, for purposes of evaluating the adequacy of the recommendations being considered for inclusion in the statement in relation to various forms of import relief that are authorized under this chapter.

(B) A request for consultation under subparagraph (A) must be made to the Trade Representative. Upon receiving such a request, the Trade Representative shall consult with the petitioner and provide such assistance, including publication of appropriate notice in the Federal Register, as may be practicable in obtaining other participants in the consultation. No consultation may occur under subparagraph (A) unless the Trade Representative, or his delegate, is in attendance.

SEC. 202. EMERGENCY RELIEF FROM INJURY CAUSED BY IMPORTS OF PERISHABLE AGRICULTURAL PRODUCTS.

(a) MONITORING OF IMPORTS.—

(1) An entity representing a domestic industry that—

(A) produces a perishable agricultural product that is like or directly competitive with an imported perishable agricultural product; and

(B) has reason to believe that such perishable agricultural product is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the industry;

may file a request with the Trade Representative for the monitoring of such imports under paragraph (2). Within 21 days after receiving the request, the Trade Representative shall determine if—

(A) the imported product is a perishable agricultural product; and

(B) there is a reasonable indication that the domestic industry is vulnerable to serious injury or the threat thereof

as a result of such increased imports (either actual or relative to domestic production).

(2) If the determinations under paragraph (1)(A) and (B) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930, the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation shall include the collection and analysis of information that would expedite an investigation under section 203.

(b) REQUESTS FOR EMERGENCY RELIEF.—

(1) If a petition is filed under section 201(a) that alleges injury from imports of a product that is, on the date of filing, subject to monitoring and investigation by the Commission under subsection (a), the petitioner may also request that emergency relief be provided under subsection (c) with respect to such imports.

(2) A petition containing a request for emergency relief may not be filed under section 201(a) before the 90th day after the date on which the Commission commenced the monitoring and investigation of the imports concerned under subsection (a).

(c) DETERMINATION AND ACTION ON REQUESTS FOR EMERGENCY RELIEF.—

(1) If emergency relief is requested under subsection (b), the Commission shall promptly make an investigation to determine, on the basis of available information, whether—

(A) increased imports (either actual or relative to domestic production) of the perishable agricultural product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable agricultural product;

(B) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive perishable agricultural product; and

(C) the serious injury cannot be timely prevented through investigation and action under sections 203 and 204.

(2)(A) If the Commission finds that the criteria described in paragraph (1) have been met, the Commission shall find that amount of any increase in, or imposition of, any duty or import restriction on such product which is necessary to prevent or remedy such injury.

(B) In recommending import relief, the Commission shall give preference to an increase in or the imposition of a duty on imports, if such relief is feasible and would prevent or remedy such injury.

(3) The Commission shall report its determination under paragraph (1) and finding under paragraph (2) to the Trade Representative at the earliest practicable time, but not later than the 21st day after the day on which the petition is filed under section 201(a).

(4) After receiving a report from the Commission containing an affirmative finding under paragraph (1), the Trade Representative shall provide emergency relief for the domestic industry unless he determines that provision of emergency relief is not in the national economic interest. The Trade Representative

shall decide whether or not to provide emergency relief within 7 days after the day on which the report is received.

(5) If the Trade Representative decides to provide emergency relief under this section, he shall, after taking into account the finding of the Commission under paragraph (2)—

(A) order import relief in the form and amount he determines necessary to prevent the serious injury or threat thereof; or

(B) order—

(i) the suspension of liquidation of all imported articles subject to a determination under paragraph (4) that are entered, or withdrawn from the warehouse for consumption, after the date of the determination,

(ii) the posting of a cash deposit, bond, or other security, in such amount as he considers appropriate, for the entry or withdrawal of articles to which the suspension of liquidation applies, or

(iii) action under both clauses (i) and (ii).

(d) TERMINATION OF EMERGENCY RELIEF.—

(1) Any emergency relief provided under subsection (c) with respect to imported articles may not remain in effect after the date on which—

(A) the Commission reports under section 203(g) that it did not find serious injury, or the threat thereof, to the domestic industry;

(B) the denial of import relief for the industry under section 204 becomes final;

(C) import relief for the industry first takes effect under section 204; or

(D) the Trade Representative terminates the emergency relief because changed circumstances indicates that such action is no longer warranted.

(2) If emergency relief is terminated under paragraph (1)—

(A) any suspension of liquidation ordered under subsection (c)(5)(B) shall promptly be terminated;

(B) any bond or security shall promptly be released; and

(C) any cash deposit shall promptly be refunded.

(3) If import relief is granted under section 204 in the form of—

(A) an increase in, or imposition of, duties, such increase or imposition shall apply to articles with respect to which liquidation was suspended under subsection (c)(5)(B); or

(B) the imposition of a quantitative restriction, the articles with respect to which liquidation was suspended under subsection (c)(5)(B) shall be counted against such restriction.

(e) DEFINITION OF PERISHABLE AGRICULTURAL PRODUCT.—For purposes of this section, a perishable agricultural product is any agricultural article regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

(1) whether the article has—

(A) a short shelf life,

(B) a short growing season, or

(C) a short marketing season,

(2) whether the article is treated as a perishable product under any other Federal law or regulation; and

(3) any other factor considered appropriate by the Trade Representative.

The presence or absence of any factor which the Trade Representative is required to take into account under paragraph (1), (2), or (3) is not necessarily dispositive of whether an article is a perishable product.

SEC. 203. INVESTIGATIONS AND DETERMINATIONS BY COMMISSION.

(a) In General.—Upon—

(1) the filing of a petition under section 201(a);

(2) the request of the President or the Trade Representative;

(3) the resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate; or

(4) its own motion;

the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(b) Critical Circumstances.—If a petition alleges that critical circumstances exist, the Commission shall determine, at the same time when the determination under subsection (a) is made, whether such circumstances do exist.

(c) Economic Factors.—

(1) In making determinations under subsection (a), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury—

(i) the significant idling of productive facilities in the domestic industry (which includes the closing of plants or the underutilization of production capacity),

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury—

(i) a decline in sales,

(ii) a decrease in market share,

(iii) a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers),

(iv) a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry,

(v) the inability of producers in the domestic industry to generate adequate capital to finance the modernization of their domestic plants and equipment, and

(vi) the extent to which the United States market is the focal point for the diversion of exports of the article

concerned by reason of restraints on exports of such article to or on imports of such article into third country markets; and

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(2) For purposes of this subsection, the term "substantial cause" means a cause which is important and not less than any other cause.

(3) In applying this subsection, the Commission shall consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury.

(4) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

(5) In the case of an investigation involving imports of a seasonable agricultural article, the Commission may find that increased imports of such article are a substantial cause of serious injury or threat thereof to the domestic industry producing an article like or directly competitive with the imported article if such increased imports are largely entered during a specific period or season of the year and are largely impacting only those domestic producers harvesting or marketing the like or directly competitive article during that period or season of the year.

(d) DETERMINATION OF DOMESTIC INDUSTRY.—

(1) For purposes of subsection (a), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) shall, to the extent information is available—

(i) in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production, and

(ii) in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion of subdivision of the producer which produces the like or directly competitive article; and

(B) may, in the case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, threat as such domestic industry only that segment of the production located in such area.

(2) The term "domestic industry" includes producers located in the United States insular possession.

(e) Treatment of Geographically Isolated Markets.—In making determinations under subsection (a), the Commission may, in appropriate circumstances, disregard quantities of the article imported into a geographically isolated market. A geographically isolated market is a market in which—

(1) the producers located within the market have not supplied demand in that market to any substantial degree in the most recent representative period, and there is no reasonable likelihood that they will do so in the future;

(2) the producers have made no significant effort, as measured by capital investments in plant and equipment, or in distribution and marketing, within a reasonably recent period, to meet demand in the market, and there is no reasonable likelihood that they will do so in the future; and

(3) producers located outside the market have not historically met demand within the market at prices reasonably equivalent to prices prevailing elsewhere in the United States because of transportation, insurance, or other costs which would be incurred to ship the product to, or sell the product in, the market.

(f) Other Matters Pertaining to Investigations.—In the course of any investigation under subsection (a), the Commission shall—

(1) seek information (on a confidential basis, to the exent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to enhance competitiveness or adjust to import competition;

(2) investigate any factor which in its judgment may be contributing to increased imports of the article under investigation, and, whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law; and

(3) after reasonable notice, hold public hearings and afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

(g) Import Injury Determination by Commission.—

(1) Within 120 days after commencing an investigation under subsection (a) with respect to a domestic industry, the Commission shall—

(A) determine whether increased imports are a substantial cause of serious injury, or the threat thereof, to the industry; and

(B) if the determination under subparagraph (A) is affirmative and the petition alleged critical circumstances, determine if critical circumstances exist.

(2)(A) If the Commission determines under paragraph (1)(B) that critical circumstances exist, the Commission—

(i) shall direct the Commissioner of Customs to order the suspension of the liquidation of all articles subject to the determination that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of notice of the order in the Federal Register; and

(ii) may direct the Commissioner of Customs to order the posting of a cash deposit, bond, or other security, in such amount as he considers appropriate, for the entry of articles to which the suspension of liquidation applies.

(B) The Commission shall immediately notify the Trade Representative of a determination made under subparagraph (B). Within 7 days after the day on which such notification is received, the Trade Representative, shall terminate the action taken by the Commission if he considers such action not to be in the national economic interest.

(C) The Trade Representative shall terminate a suspension of liquidation ordered under subparagraph (A)(i), and release any bond or other security, and refund any cash deposit, required under subparagraph (A)(ii), if—

(i) a denial of import relief for the industry concerned under section 204 becomes final; or

(ii) import relief in a form other than an increase in, or the imposition of, duties is provided under section 204.

(D) If import relief is granted under section 204 in the form of—

(i) an increase in, or imposition of, duties, such increase or imposition shall apply to articles with respect to which liquidation was suspended under subparagraph (A)(i); or

(ii) the imposition of a quantitative restriction, the articles with respect to which liquidation was suspended under subparagraph (A)(i) shall be counted against such restriction.

(h) IMPORT RELIEF DETERMINATIONS BY COMMISSION.—

(1) Within 60 days after making a determination under subsection (g)(1)(A) that serious injury, or the threat thereof, to a domestic industry exists, the Commission shall determine the form and amount of import relief that would be the most effective—

(A) in preventing or remedying the serious injury or threat thereof; and

(B) in facilitating the efforts by the domestic industry to enhance its long-term competitiveness or to adjust to import competition.

If the Commission recommends under subparagraph (A) the imposition of a quantitative restriction on imports, the Commission shall recommend the administration of such a restriction through the public auction of import licenses unless the Commission determines that the use of such an auction would have undesirable economic results.

(2) In determining the form and amount of import relief under paragraph (1), the Commission shall consider the following factors:

(A) The extent to which import relief, if implemented in conjunction with existing or proposed actions by the domestic industry that are—

(i) specified in the statement of proposed adjustment measures, if any, submitted under section 201(b); or

(ii) revealed to the Commission under subsection (f)(1);

are likely to enhance the long-term competitiveness, or otherwise facilitate the adjustment to import competition, of the domestic industry.

(B) The current competitive position of the domestic industry in the United States and world markets.

(C) The trends in conditions of competition in the United States and world markets that are likely to continue.

(D) The role of the particular industry in the national economy, including its importance to United States national economic security.

(i) REPORT BY COMMISSION.—

(1) The Commission shall report to the Trade Representative its findings, and the basis therefor, with respect to each investigation undertaken under subsection (a). The report shall be made at the earliest practicable time, but not later than 180 days after the date on which the petition is filed, or resolution is received, or the motion is adopted, as the case may be.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (g)(1)(A).

(B) If the determination under subsection (g)(1)(A) is affirmative, the import relief determination made under subsection (h)(1).

(C) Any dissenting or separate views by members of the Commission regarding the determinations.

(D) A detailed statement regarding how the factors listed in subsection (h)(2) were applied in determining the form and amount of import relief.

(E) An estimate of—

(i) the effects (on the basis of either costs or benefits, or both) of the import relief on—

(I) consumers of the imported product and consumers of the product generally, and

(II) on the other sectors of the United States economy, and

(ii) the economic or social costs or benefits to taxpayers, communities, and workers which would likely result if import relief were or were not provided.

(F) Information, if any, obtained by the Commission under subsection (f)(1) regarding actions or proposed actions by the domestic industry.

(3) The Commission, after submitting a report to the Trade Representative under paragraph (1), shall promptly make it available to the public (with the exception of the confidential information obtained under subsection (f)(1) and any other information which the Commission determines to be confidential)

and cause a summary thereof to be published in the Federal Register.

(4) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this chapter, unless 1 year has elapsed since the Commission made its report to the President or the Trade Representative as the case may be of the results of such previous investigation.

(j) NOTIFICATION EFFECTING AUTOMATIC CERTIFICATION OF ELIGIBILITY TO APPLY FOR ADJUSTMENT ALLOWANCES.—Within 48 hours after the Commission finds with respect to any article the serious injury, or the threat thereof, described in subsection (a) to a domestic industry, it shall notify the Secretary of Labor and the Secretary of Commerce (for purposes of effecting automatic certification of eligibility to apply for adjustment assistance under section 222(b) or 251(c)(2), as the case may be) of the identity of—

(1) the domestic industry;

(2) the firms and subdivisions, to the extent known, within such industry; and

(3) the articles produced by such industry that are like or directly competitive to the imported articles that caused such injury or threat.

SEC. 204. ACTION BY TRADE REPRESENTATIVE AFTER DETERMINATION OF IMPORT INJURY.

(a) DETERMINATIONS REGARDING RELIEF.—

(1) After receiving a report containing an affirmative finding under section 203(i) regarding a domestic industry and taking into account the matters specified in paragraph (3), the Trade Representative shall decide either—

(A) to provide import relief to the extent that, and for such time (not to exceed 5 years) as, he determines necessary to prevent or remedy the serious injury, or the threat thereof, to the industry and to enhance the long-term competitiveness or otherwise facilitate the orderly adjustment to import competitive of the industry; or

(B) not to provide import relief because—

(i) the provision of any import relief would threaten the national security of the United States; or

(ii) the economic costs of providing any import relief are so great that they outweigh the economic and social benefits of providing import relief.

(2) In addition to, or in lieu of, the forms of import relief specified in section 206(a)(3), the Trade Representative may initiate negotiations with the foreign governments concerned to address the underlying cause of the increase in imports, or otherwise to alleviate the serious injury or threat thereof to the domestic industry. If the Trade Representative decides to initiate negotiations in lieu of providing any other form of import relief, such decision shall be treated, for purposes of subsection (b)(1), as a decision to provide relief that differs from the import relief determined by the Commission. In the document required to be submitted under subsection (b)(1), the Trade Representative

shall state the period of time in which he will undertake such negotiations. If at, or any time before, the close of such period of time (if Congress does not implement under subsection (b)(5) the import relief recommended by the Commission) the Trade Representative reports to Congress that the negotiations have not been successful, the Trade Representative is authorized to provide import relief under subsection (a) to the domestic industry concerned. For purposes of exercising such authority, the report of the Commission containing the affirmative finding under section 203(i) regarding the industry shall be treated as having been received by the Trade Representative on the day the negative report regarding the negotiations is made to Congress.

(3) For purposes of making decisions under paragraph (1), the Trade Representative shall give particular weight to the estimate of costs and benefits included in the report of the Commission under section 203(i)(2)(E) and shall take into account, in addition to such other factors as he considers relevant—

(A) information and advice from the Secretary of Labor on the extent to which workers in the industry will benefit from adjustment assistance under chapter 2 and other manpower programs;

(B) information and advice from the Secretary of Commerce on the extent to which firms in the industry will benefit from adjustment assistance under chapter 3;

(C) the factors set forth in subparagraphs (A) through (D) of section 203(h)(2);

(D) the effect of import relief on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

(E) the likely effect of the import relief on the agricultural exports of the United States;

(F) the effect of import relief on the international economic interests of the United States;

(G) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(H) the geographic concentration of imported articles marketed in the United States and presence, if any, of geographically isolated markets for such articles;

(I) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article, to, or on imports of such article into, third country markets;

(J) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided; and

(K) if a seasonal agricultural product is involved, the seasonal nature of the imports.

(4) The Trade Representative shall make the decision under paragraph (1) within 30 days (60 days if the Trade Representative considers the matter extraordinarily complicated) after re-

ceiving a report from the Commission containing an affirmative finding under section 204 (or a finding under section 204 which he considers to be an affirmative finding, by reason of section 330(d) of the Tariff Act of 1930); except that if a supplemental report is requested under paragraph (5), the Trade Representative shall make the decision under paragraph (1) within 30 days after the supplemental report is received.

(5) The Trade Representative may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 204 with respect to a domestic industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the Trade Representative's request, furnish additional information with respect to the industry in a supplemental report.

(b) Reports to Congress.—

(1) On the day the Trade Representative decides to provide import relief under subsection (a) to a domestic industry, the Trade Representative shall transmit to Congress a document describing that relief. If the import relief to be provided differs from the import relief determined by the Commission under section 203(h)(1), the Trade Representative shall state the reasons in detail for the difference.

(2) On the day on which the Trade Representative decides not to provide import relief under subsection (a)(1)(B) to a domestic industry, the Trade Representative shall transmit to Congress a document that sets forth—

(A) in detail, the reasons for the decision; and

(B) what other actions, if any, are being taken to help the industry to overcome the serious injury or threat thereof and the workers to find productive employment.

(3) The document required to be transmitted to Congress under paragraph (1) or (2) shall specify how the Trade Representative applied—

(A) the estimates of costs and benefits included in the report of the Commission under section 203(i)(2)(E); and

(B) the factors set forth in subsection (a)(3)(A) through (I); with respect to the decision under such paragraph.

(4) On the day on which the Trade Representative implements any import relief under section 205 not reported under paragraph (1), he shall transmit to Congress a document setting forth the action he is taking and the reasons therefor.

(5) If the Trade Representative reports under paragraph (1) or (2) that the import relief being provided differs from the import relief determined by the Commission, or that import relief will not be provided to the domestic industry, the import relief determined by the Commission under section 203(h)(1) shall take effect (as provided in subsection (c)(2)) upon enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in paragraph (1) or (2) is transmitted to the Congress.

(c) Time for Taking Effect of Relief.—

(1) Except as provided in paragraphs (1) and (2), the Trade Representative shall order (or otherwise implement) import

relief provided under this chapter to take effect within 15 days after the date on which the Trade Representative decides to provide the relief under section 204(a).

(2) If the contingency set forth in subsection (b)(5) occurs, the Trade Representative shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, order (or otherwise implement) the import relief that was determined by the Commission under section 203(h)(1).

(3) If the Trade Representative announces on the date on which the decision is made under section 204(a) his intention to negotiate one or more orderly marketing or other agreements, the import relief shall be implemented and take effect within 90 days after such date.

(d) ORDERLY MARKETING AND OTHER AGREEMENTS.—

(1) If the Trade Representative provides import relief other than through orderly marketing or other agreements, he may, after such relief takes effect, negotiate orderly marketing or other agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, any import relief previously provided.

(2) If the Trade Representative negotiates an orderly marketing or other agreement and the agreement does not continue to be effective, he may, consistent with the limitations contained in section 205, provide any other import relief.

(e) TREATMENT OF CERTAIN SUSPENSIONS OF DUTY.—

(1) The suspension of—

(A) item 806.30 or 807.00 of the Tariff Schedules of the United States with respect to an article; and

(B) the designation of any article as an eligible article for purposes of title V;

shall be treated as an increase in duty under section 206(a)(3).

(2) No order providing for a suspension referred to in paragraph (1) with respect to any article may be made by the Trade Representative, nor may any such suspension be determined by the Commission under section 203(h)(1), unless the Commission determines in the course of its investigation under section 203 that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be—

(A) the application of item 806.30 or item 807.00; or

(B) the designation of the article as an eligible article for the purpose of title V.

(f) REGULATIONS.—

(1) The Trade Representative shall by regulation provide for the efficient and fair administration of any import relief provided under this chapter.

(2) In order to carry out an orderly marketing or other agreements concluded to carry out this chapter, the Trade Representative may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any orderly marketing agreement concluded under this chapter with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a

major geographic area of the United States, the Trade Representative may issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

SEC. 205. EXTENSION, MODIFICATION, AND TERMINATION OF IMPORT RELIEF.

(a) EXTENSION, MODIFICATION, AND TERMINATION.—Any import relief provided under this chapter—

(1) shall, unless extended under paragraph (3), termination no later than the close of the 5th anniversary of the day on which import relief with respect to the article in question first took effect under section 204;

(2) if provided for a period of more than 3 years, shall, to the extent feasible, be phased down during the period of such relief, with the first reduction of relief taking effect no later than the close of the 3rd anniversary of the day on which such relief first took effect;

(3) may be extended by the Trade Representative at a level of relief no greater than the level in effect immediately before such extension, for one period of not more than 3 years if the Trade Representative determines, after taking into account the advice received from the Commission under subsection (b) and after taking into account the matters referred to in section 204(a)(3), that such extension is in the national interest; and

(4) shall be terminated by the Trade Representative if he determines, after taking into account the advice received from the Commission under subsection (b) and after seeking advice of the Secretary of Commerce and the Secretary of Labor (and the Secretary of Agriculture if an agricultural produce is involved), that such reduction or termination is in the national interest.

(b) REGULAR COMMISSION REVIEW.—

(1) So long as any import relief remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to enhance competitiveness or adjust to import competition). The Commission shall submit to the Congress and the Trade Representative, and make available to the public, an annual report on the review undertaken under this paragraph while the import relief is in effect.

(2) Upon request of the Trade Representative or upon its own motion, the Commission shall advise the Trade Representative of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief.

(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the day any import relief provided under this chapter is to ter-

minate by reason of the expiration of the initial period therefor, the Commission shall advise the Trade Representative of its judgment as to the probable economic effect on such industry of such termination.

(4) In advising the Trade Representative under paragraph (2) or (3) as to the probable economic effect on the industry concerned, the Commission shall take into account all economic factors which it considers relevant, including the matters referred to in section 204(a)(2) and the progress and specific efforts made by the industry concerned to enhance competitiveness or to adjust to import competition.

(5) Advice by the Commission under paragraph (2) or (3) shall be given on the basis of an investigation during the course of which the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(c) Special Commission Review.—

(1) The Commission—

(A) at the request of the Trade Reperesentative shall; and

(B) at the request of any interested party, or on its own motion, may;

undertake a review to determine whether a modification of the form or amount of any import relief provided under this chapter would be appropriate—

(i) to compensate for changes in currency exchange rates;

(ii) to prevent or respond to attempts to circumvent the import relief;

(iii) to ensure the effectiveness of the import relief in providing adequate opportunity for facilitating competitiveness or adjustment;

(iv) to account for changed circumstances in the domestic economy; or

(v) to account for actions taken or not taken by the domestic industry to become more competitive or to adjust.

During and review undertaken under this paragraph, the Commission shall provide opportunity of the presentation of views by interested persons.

(2) As promptly as feasible, but not later than the 90th day after commencing a review under paragraph (1), the Commission shall submit to the Trade Representative each import relief modification, and a detailed statement of the reasons therefor, that it determines under paragraph (1) to be appropriate. Within 21 days after receiving the proposed modification and statement, the Trade Representative shall decide whether to order or implement the proposed modification or any part thereof.

For purposes of the preceding sentence, a proposed modification of the Commission shall be treated by the Trade Representative as an affirmative determination of the Commission under section 203(i) and the provisions of section 204 apply to a proposed modification in the same manner and to the same extent as to such an affirmative determination.

SEC. 206. DEFINITIONS; MISCELLANEOUS PROVISIONS.

(a) DEFINITIONS.—For purposes of this chapter:

(1) The term "Commission" means the United States International Trade Commission.

(2) Critical circumstances exist if a substantial increase (absolutely or relatively) in the quantity of an article being imported into the United States over a relatively short period of time has led to circumstances in which a delay in the taking effect of import relief would cause harm that would significantly impair the effectiveness of such relief.

(3)(A) The term "import relief" means one or more of the following actions with respect to an imported article:

(i) Subject to subparagraph (B), the ordering of an increase in, or the imposition of, any duty on the article.

(ii) Subject to subparagraph (B), the ordering of a tariff-rate quota on the article.

(iii) The ordering of a modification of, or the imposition of, any quantitative restriction on the importation into the United States of the article.

(iv) The negotiation, conclusion, and carrying out of orderly marketing agreements with foreign countries limiting the export from foreign countries or the importation into the United States of the article.

(B) No order issued to implement import relief described in clause (i) or (ii) of subparagraph (A) shall be made increasing a rate of duty to (or imposing) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time of the order.

(C) The import relief specified in clauses (iii) and (iv) of subparagraph (A) may not be provided to any industry at the same time.

(4) The term "Trade Representative" means the United States Trade Representative.

(b) ARTICLES TO WHICH CHAPTER NOT APPLICABLE.—No investigation may be made under section 203 with respect to an article which has received import relief under this chapter unless 2 years have elapsed since the last day on which such import relief was provided with respect to that article.

(c) OTHER PROVISIONS.—

(1) Actions by the Trade Representative under this chapter may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 203(d)(1)(B), then the Trade Representative shall take into account the geographic concentration of domestic production and of imports in that area in providing import relief, if any, which may include actions authorized under paragraph (1).

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Chapter 2—Adjustment Assistance for Workers

Subchapter A—Petitions and Determinations

* * * * * * *

SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

[The Secretary] *(a) Except as provided in subsection (b), the Secretary* shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if he determines—

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

(b) The Secretary shall treat any group of workers in a firm or subdivision that is—

(1) within a domestic industry with respect to which the Secretary receives a notification under section 203(j); and

(2) produces articles that are like or directly competitive with the articles identified in such notification;

as having met the requirements for certification under subsection (a) if the petition for certification is filed within 3 years after the date such notification is received. A certification of eligibility to apply for adjustment assistance shall be issued under section 223 specifically identifying each group of workers who qualify for certification under this subsection.

* * * * * * *

SEC. 224. STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION

(a) Whenever the [International Trade Commission (hereafter referred to in this chapter as the "Commission")] begins an investigation under section [201] *203* with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section [201] *203(i)*. Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

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Subchapter B—Program Benefits

PART I—TRADE READJUSTMENT ALLOWANCES

SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS.

(a) * * *

* * * * * * *

[(5) Such worker, unless the Secretary has determined that no acceptable job search program is reasonably available—]

(5) Such worker, if exempt from paragraph (6)—

(A) is enrolled in a job search program approved by the Secretary under section 237(c), or

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a job search program approved by the Secretary under section 237(c).

The Secretary shall waive the application of subparagraph (A) in the case of any worker if the Secretary determines that no acceptable job search program is reasonably available for the worker.

(6) Such worker, unless exempt from this paragraph under subsection (d)—

(A) is enrolled in a training program approved by the Secretary under section 236(a); or

(B) has, after the date on which the worker first became totally separated or partially separated from the adversely affected employment, completed a training program approved by the Secretary under section 236(a).

(d) If the Secretary determines that—

(1) an adversely affected worker—

(A) is not enrolled in a training program as required under subsection (a)(6)(A), or

(B) has ceased to participate in a training program approved by the Secretary under section 236(a) before completing the program; and

(2) there is no justifiable cause for such failure to enroll or cessation;

no trade readjustment allowance may be paid to the adversely affected worker under this part on or after the date of such determination until the worker enrolls or resumes participation in a training program approved under section 236(a).

(e) If the Secretary determines that—

(1) it is not feasible or appropriate to approve a training program under section 236(a) for an adversely affected worker; or

(2) the adversely affected worker has no reasonable prospect of being reemployed by the firm or subdivision from which the worker was totally separated;

the Secretary shall exempt the worker from subsection (a)(6).

* * * * * * *

SEC. 232. WEEKLY AMOUNTS.

(a) [Subject to subsections (b) and (c),] *Except as provided in subsection (d), and subject to subsections (b) and (c),* the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B)) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c); and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law.

* * * * * * *

(d)(1) If an adversely affected worker accepts full-time employment (hereinafter referred to in this subsection as "reemployment") at a weekly wage that is less than his average weekly wage in adversely affected employment and the worker has not met the requirements of section 231(a) (1) and (2), the worker may elect to receive trade readjustment allowances (in the form of supplemental wage allowances) under this subsection with respect to any week during which the worker performs services in such reemployment job for scheduled hours of work in each such week. Upon making such an election, the adversely affected worker is not eligible for trade readjustment allowances under the other provisions of this part.

(2) A supplemental wage allowance shall be payable for any week of reemployment without regard to whether the worker is also receiving, or is entitled to, unemployment insurance with respect to such week.

(3) The supplemental wage allowance payable to an adversely affected worker under this subsection with resepct to any week in which services are performed in such a reemployment job shall be an amount that—

(A) is equal to the difference between—

(i) the weekly wage received for such week and

(ii) an amount equal to 80 percent of his average weekly wage in adversely affeced employment (as determined for purposes of section 247(6)); but

(B) does not exceed 50 percent of the weekly amount of trade adjustment allowance for the worker (as determined for purposes of subsection (a).

SEC. 233. LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.

(a)(1) [The] *Except as otherwise provided in this section, the* maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2) The maximum amount of supplemental wage allowances payable to a reemployed worker under section 232(d) with respect to the period covered by any certification shall in lieu of the maximum amount of trade readjustment allowance specified in paragraph (1) be the amount that is the product of 52 multiplied by the maximum weekly amount as determined under section 232(d)(2)(B), but such product shall be reduced by such maximum weekly amount multiplied by the number of weeks preceding the first week of work in the reemployment job with respect to which the worker was entitled to or paid a trade readjustment allowance.

⟦(2)⟧ *(3)* A trade readjustment allowance shall not be paid for any week after the 104-week period beginning with the first week following the first week in the period covered by the certification with respect to which the worker has exhausted (as determined for purposes of section 231(a)(3)(B)) all rights to that part of his unemployment insurance that is regular compensation.

⟦(3)⟧ *(4)* Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under ⟦this chapter,⟧ *section 231(a),* or

(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A).

(b) A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) ⟦if the adversely affected worker who would receive such allowance did⟧ *in the case of an adversely affected worker who was exempted from the training requirement in section 231(a)(6) if the worker does* not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1).

* * * * * * *

SEC. 236. TRAINING.

(a)(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment follwing completion of such training,

(D) training approved by the Secretary is available to the worker from either governmental agencies or private sources (which may include area vocational educational schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers), and

(E) the worker is qualified to undertake and complete such training,

the Secretary, shall [to the extent appropriated funds are available approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training paid on his behalf by the Secretary. Insofar as possible,] *approve such training for the worker and the worker shall be entitled to have payment of the costs of such training (but not to exceed $4,000 with respect to any single certification and any one adversely affected worker) paid by the Secretary. The Secretary shall prescribe regulations that set forth the criteria under subparagraphs (A) through (E) that will be used as the basis for making determinations under this subsection.* The Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2) The Secretary shall pay the costs of training provided under paragraph (1) under a voucher system. If the costs of the training provided to a worker under paragraph (1) is less than $4,000, then a relocation allowance granted to the worker under section 238 may be paid, in whole or part, through the voucher system, but the aggregate payment under the voucher system of any such allowance together with the payment for training under paragraph (1) may not exceed the $4,000 limitation in that paragraph.

[(2)]*(3)* For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

[(3)]*(4)*(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

[(4)]*(5)* The training programs that may be approved under paragraph (1) include, but are not limited to—

(A) on-the-job training,

(B) any training program provided by a State pursuant to section 303 of the Job Training Partnership Act,

(C) any training program approved by a private industry council established under section 102 of such Act, [and]

(D) a program of remedial education, and

[(D)]*(E)* any other training program approved by the Secretary.

(b) The Secretary may, where appropriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary may not authorize—

(1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowances rate authorized under the Federal travel regulations, or

(2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations, and

[(c) Any adversely affected worker who, without good cause, refuses to accept or continue, or fails to make satisfactory progress in, suitable training to which he has been referred by the Secretary shall not thereafter be entitled to payments under this chapter until he enters or resumes the training to which he has been so referred.]

[(d)] *(c)* Notwithstanding any provision of subsection (a)(1), [the Secretary may pay the costs of on-the-job training of an adversely affected worker under subsection (a)(1) only if—] *the Secretary shall pay the costs of on-the-job training of an adversely affected worker under subsection (a)(1) in 12 equal monthly installments, but the Secretary may pay such costs only if—*

(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

* * * * * * *

[(e)] *(d)* A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter because the individual is in training approved under subsection (a), because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under paragraph (1) and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

[(f)] *(e)* For purposes of this section the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

* * * * * * *

Subchapter C—General Provisions

SEC. 239. AGREEMENTS WITH STATES.

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subchapter as "cooperating States" and "cooperating States agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, but in accordance with subsection (f), will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services, (3) will make determinations and approvals regarding job search programs under sections 231(c) and 237(c), [and (4)] *(4) will determine exemptions under section 231(d), and (5)* will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

* * * * * * *

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

(1) advise each worker who applies for unemployment insurance of the benefits under this chapter and the procedures and deadlines for applying for such benefits,

(2) facilitate the early filing of petitions under section 221 for workers who the agency considers likely to be eligible for benefits under this chapter,

[(1)] *(3)* advise each adversely affected worker, *as appropriate, to enroll in a job search program or* to apply for training under section 236(a) at the time the worker makes application for trade readjustment allowances (but failure of the worker to do so may not be treated as cause for denial of those allowances), and

[(4)] *(2)* [within 60 days] *as soon as practicable* after application for training is made by the worker, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.

* * * * * * *

SEC. 245. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1986, 1987, 1988, 1989, 1990, and 1991 such sums as may be necessary to carry out the purposes of this chapter.]

SEC. 245. ADJUSTMENT ASSISTANCE TRUST FUND.

(a) There is established in the Treasury of the United States a trust fund to be known as the Adjustment Assistance Trust Fund (hereinafter in this section referred to as the "Trust Fund").

(b) The Trust Fund shall consist of monies—

(1) transferred under subsection (c);

(2) deposited under subsection (d); and

(3) appropriated pursuant to subsection (f).

(c) The Secretary of the Treasury shall transfer, at least quarterly, to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into the general fund that are attributable to—

(1) the imposition of duties as import relief under chapter 1 of this title as an action under section 301(a); and

(2) the public auctioning of import licenses under section 1102 of the Trade Agreements Act of 1979 (19 U.S.C. 2581).

(d) With respect to each fiscal year in which duties are imposed under section 245A, the Secretary of the Treasury shall deposit into the Trust Fund all duties collected under that section with respect to that year.

(e) Amounts in the Trust Fund shall only be available—

(1) to carry out part 1 and section 236, including administrative expenses; and

(2) to the extent provided for in advance by appropriation Acts, to carry out—

(A) chapters 2 (except part 1 and section 236) and 3 of this title, including administrative expenses, and

(B) any community assistance program provided for under Federal law with respect to communities in which a substantial number of workers or firms, or both, are certified as eligible to apply for adjustment assistance under chapter 2 or 3.

(f) There are authorized to be appropriated to the Trust Fund such sums as may be necessary to supplement the monies otherwise accruing to the Trust Fund to carry out the provisions referred to in subsection (e)(2).

(g) Any amount remaining in the Trust Fund at the close of a fiscal year not needed for current operations shall be deposited into the general fund of the Treasury as miscellaneous receipts.

SEC. 245A. IMPOSITITON OF DUTIES TO FUND WORKER ADJUSTMENT ASSISTANCE PROGRAM.

(a)(1) The President shall undertake negotiations necessary to achieve changes in the General Agreement on Tariffs and Trade that would allow any country to impose a small uniform duty on all imports to such country for the purpose of using the revenue from such duty to fund any program which assists worker adjustment to import competition.

(2) On the first day after the date of enactment of this section on which the General Agreement on Tariffs and Trade allows any country to impose a duty described in paragraph (1), the President shall submit to the Congress a written statement certifying that the General Agreement on Tariffs and Trade allows such a duty.

(b) With respect to each fiscal year occurring after the fiscal year in which the statement referred to in subsection (a)(3) is submitted to Congress, there is imposed, subject to subsection (d) and in addition to any other duty imposed by law, a duty on all articles entered, or withdrawn from warehouse, for consumption in the customs territory of the United States during such fiscal year.

(c) The rate of the duty imposed under subsection (b) during a fiscal year shall be a uniform ad valorem rate, proclaimed by the President at least 30 days before the beginning of such year, sufficient to provide the funding necessary to carry out the provisions of this chapter during such year.

(d)(1) Except as otherwise provided in this subsection, duty-free treatment provided with respect to any article under any other provision of law shall not prevent the imposition of duty with resepct to such article by subsection (b).

(2) No duty may be imposed under subsection (b) with respect to—

(A) any article that is accorded duty-free treatment under schedule 8 of the Tariff Schedules of the United States (other than an article provided for in item 870.40, 870.45, 870.50, 870.55, or 870.60 of such Schedule); or

(B) any article which has a value of less than $1,000.

* * * * * * *

CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

SEC. 251. PETITIONS AND DETERMINATIONS.

(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Commerce (hereinafter in this chapter referred to as the "Secretary") by a firm (including any agricultural firm) or its representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person, organization, or group found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(c) **[**The Secretary**]** *(1) Except as provided in paragraph (2), the Secretary* shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if he determines—

[(1)**]***(A)* that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

[(2)**]***(B)* that—

[(A)**]***(i)* sales or production, or both, of the firm have decreased absolutely, or

[(B)**]***(ii)* sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

[(3)](*C*) that increases of imports of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of [paragraph (3),] *subparagraph (C)* the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(2) The Secretary shall treat any firm that is—

(*A*) within a domestic industry with respect to which the Secretary receives a notification under section 203(j); and

(*B*) produces articles that are like or directly competitive with the articles identified in such notification;

as having met the requirements for certification under paragraph (1) if the petition for certification is filed within 3 years after the date such notification is received.

SEC. 264. STUDY BY SECRETARY OF COMMERCE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION: ACTION WHERE THERE IS AFFIRMATIVE FINDING.

(a) Whenever the Commission begins an investigation under section [201] *203* with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the orderly adjustment of such firms to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section [201.] *203(i).* Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) Whenever the Commission makes an affirmative finding under section [201(b)] *203(g)* that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.

* * * * * * *

CHAPTER 5—SUPPLEMENTAL WORKER TRAINING

SEC. 276. FINANCIAL ASSISTANCE FOR TRAINING PROGRAMS.

(a) The Secretary of Commerce (hereinafter referred to in this chapter as the 'Secretary') may provide financial assistance in the

form of grants and loans under this chapter to support, in whole or in part, training programs administered by educational institutions (whether public or private) and by firms for workers eligible for training under chapter 2.

(b) Loans and grants made by the Secretary under this chapter shall be subject to such terms and conditions as the Secretary considers necessary to protect the interests of the United States, including the restrictions applicable to direct loans provided for in section 255 (b) and (c) and the following conditions:

(1) The aggregate amount of loans made with respect to any one training program under this chapter and outstanding at any time may not exceed $1,000,000.

(2) The aggregate amount of grants made under this chapter and outstanding at any time may not exceed $1,000,000.

SEC. 277. ELIGIBLE TRAINING PROGRAMS.

(a) Except as provided in subsection (b), the Secretary may not provide financial assistance under this chapter with regard to a training program unless the Secretary determines, after consultation with the Secretary of Labor, that the program will provide training that would meet the standards for approval under section 236(a)(1)(D).

(b) The Secretary may exempt from subsection (a) any training program if the Secretary considers the program to contain innovative methods that merit testing. Not more than 30 percent of the monies available in any fiscal year for the carrying out of this chapter may be expended on training programs subject to this subsection.

SEC. 278. FINANCING.

(a) There is established in the Treasury of the United States the Supplemental Training Fund (hereinafter in this section referred to as the "fund") which shall be available, as provided for in advance in appropriation Acts, for the provision of financial assistance under this chapter. The fund shall consist of—

(1) appropriations to the fund under subsection (b); and

(2) payments of principal and interest, and other receipts, received by the Secretary in the administration of this chapter.

(b) There are appropriated from time-to-time to the fund all monies in the account in the Treasury into which are deposited repayments and other receipts under section 257(c) other than such monies as are necessary for the carrying out of the administrative functions associated with the operation of the financial assistance program authorized under chapter 3.

CHAPTER [5] 6—MISCELLANEOUS PROVISIONS

SEC. 280. GENERAL ACCOUNTING OFFICE REPORT.

(a) * * *

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TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

(a) Determinations Requiring Action.—

[(1) In general.—If the President determines that action by the United States is appropriate—

[(A) to enforce the rights of the United States under any trade agreement; or

[(B) to respond to any act, policy, or practice of a foreign country or instrumentality that—

[(i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

[(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice.]

(1) Mandatory action.—

(A) By the trade representative.—If the United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative") after an investigation under section 302 determines that—

(i) the rights of the United States under any trade agreement are being denied; or

(ii) an act, policy, or practice of a foreign country—

(I) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(II) is unjustifiable and burdens or restricts United States commerce (including commerce between the United States and another foreign country);

the Trade Representative, subject to the specific direction, if any, of the President, shall, subject to subparagraph (B), take action under subsection (b) or (c), or both, to enforce such rights or to obtain the elimination of such act, policy, or practice.

(B) Exception.—The Trade Representative is not required to take action under subparagraph (A)

(i) the Contracting Parties to the General Agreement on Tariffs and Trade (hereinafter in this title referred to as the "GATT") have determined, or a panel of experts has reported to the Contracting Parties, that—

(I) the rights of the United States under a trade agreement are not being denied, or

(II) the act, policy, or practice is not a violation of, or inconsistent with, the rights of the United States, or does not deny, nullify, or impair benefits to the United States under any trade agreement; or

(ii) the Trade Representative, finds that—

(I) the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement,

(II) the foreign country has agreed to eliminate or phase out the act, policy, or practice, or has agreed to an imminent solution to the burden or restriction on United States commerce that is satisfactory to the Trade Representative,

(III) it is impossible for the foreign country to achieve the results described in subclause (I) or (II), as appropriate, but the foreign country agrees to provide to the United States compensatory trade benefits that are satisfactory to the Trade Representative, or

(IV) such action is not in the national economic interest of the United States because it would result in United States economic interests being more adversely affected if action were taken under this subclause than if not, and he complies with the reporting requirement under paragraph (F).

(C) EXPORT TARGETING.—

(i) IN GENERAL.—If the Trade Representative determines after an investigation under section 302 that export targeting by a foreign country exists and is a significant burden or restriction on United States commerce, the Trade Representative, subject to the specific direction, if any, of the President, shall, subject to clause (ii)—

(I) take action under subsection (b) or (c), or both, to obtain the elimination of the export targeting;

(II) enter into an agreement under which the foreign country provides an imminent solution to the significant burden or restriction on United States commerce, or provides compensatory trade benefits satisfactory to the Trade Representative; or

(III) take any combination of actions under subclauses (I) and (II).

The action under this subparagraph shall, to the extent possible, reflect the full benefit level of the export targeting to the beneficiary over the period during which it has an effect.

(ii) EXCEPTION.—The Trade Representative is not required to take action under clause (i) if the Trade Representative—

(I) finds that such action is not in the national economic interest of the United States by reason of the cause described in subparagraph (B)(ii)(IV); and

(II) complies with the reporting requirement under paragraph (E).

(iii) ADDITIONAL ACTIONS.—In addition to taking action under clause (i), the Trade Representative, subject to the specific direction, if any, of the President,

may take administrative actions, and, if necessary, propose legislation, to implement any other action by the United States that would restore or improve the international competitive position of the industry affected by the export targeting.

(iv) PRIVATE SECTOR ADVICE.—If the Trade Representative does not take action under clause (i) on the basis of the exception provided for under clause (ii), the Trade Representative shall promptly appoint a pane of experts to advise on measures to promote the competitiveness of the industry affected by the export targeting. The panel shall consist of individuals from the private sector (including individuals who represent management and labor in the industry) who, by education or experience, are qualified to serve on the panel. The panel shall submit to the Trade Representative a statement of its advice and recommendations regarding the industry within 6 months after the date on which the panel is first convened. The Trade Representative shall promptly thereafter submit the statement, together with any recommendation he may have regarding the statement, to Congress.

(D) EQUIVALENCY OF VALUE.—Any action taken—

(i) under subparagraph (A) to eliminate an act, policy, or practice; or

(ii) under subparagraph (C) to eliminate export targeting;

shall be devised so as to affect goods or services of the foreign country involved in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce.

(E) REPORT TO CONGRESS.—The Trade Representative shall promptly report in writing to Congress with respect to each action taken (or the reasons why no action was taken) under this paragraph—

(i) to enforce the rights of the United States or to eliminate the acts, policies, and practices described in subparagraph (A); or

(ii) to eliminate export targeting under subparagraph (D).

(2) DISCRETIONARY ACTION.—

(A) IN GENERAL.—if the Trade Representative determines after an investigation under section 302, that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce (including commerce between the United States and another foreign country); the Trade Representative, if he determines that action by the United States is appropriate and subject to the specific direction, if any, of the President shall take all appropriate and feasible action within his power to obtain the elimination of that act, policy, or practice.

(B) EXPORT TARGETING.—If the Trade Representative determines after a investigation under section 302 that export targeting by a foreign country exists and threatens to be a

significant burden or restriction on United States commerce, the President, if he determines that action by the United States is appropriate, shall take all appropriate and feasible action to obtain the elimination of the export targeting.

[(2) SCOPE OF ACTION.—The President may exercise his authority under this section with repect to any goods or sector—

[(A) on a nondiscriminatory basis or solely against the foreign country or instrumentality involved, and

[(B) without regard to whether or not such goods or sector were involved in the act, policy, or practice identified under paragraph (1).]

(5) SCOPE OF ACTION.—In exercising authority under this section with respect to any goods or sector, the Trade Representative—

(A) may act on a nondiscriminatory basis or solely against the foreign country involved; but

(B) shall give preference—

(i) to taking action with respect to the goods or sector involved in the act, policy, or practice identified under paragraph (1) or (2), or

(ii) if the provision of compensatory trade benefits to the United States if under negotiation, to seeking compensatory benefits with respect to the same goods or sector.

[(b) OTHER ACTION.—Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—]

(b) OTHER ACTION.—

(1) IN GENERAL.—For purposes of carrying out paragraphs (1) and (2) of subsection (a), the Trade Representative is authorized to—

[(1)]*(A)* suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country [or instrumentality] involved;

[(2)]*(B)* impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country [or instrumentality] for such time as he determines appropriate[.]*; and,*

(C) withdraw or refrain from proclaiming under title V—

(i) the designation of such foreign country as a beneficiary developing country; or

(ii) the designation of any product of such foreign country as an eligible article.

(2) FACTORS AFFECTING USE OF IMPORT RESTRICTIONS.—In applying paragraph (1), the Trade Representative shall—

(A) give preference to the imposition of duties over the imposition of other import restrictions;

(B) if an import restriction other than a duty is imposed, consider substituting, on an incremental basis, an equivalent duty for such other import restriction; and

(C) before determining to take action to restrict imports, take into account the likely impact that such action will have on United States agricultural exports.

(c) ADDITIONAL ACTIONS ON SERVICES.—

(1) IN GENERAL.—Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in subsection (b), the **[**President may—**]** *Trade Representative is authorized to—*

(A) restrict, in the manner and to the extent the **[**President**]** *he* deems appropriate, the terms and conditions of any such authorization, or

(B) deny the issuance of any such authorization.

(2) AFFECTED AUTHORIZATIONS.—Actions under paragraph (1) shall apply only with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(A) a petition is filed under section 302(a), or

[(B) a determination to initiate an investigation is made by the United States Trade Representative (hereinafter in this chapter referred to as the 'Trade Representative') under section 302(c).**]**

(B) a determination to initiate an investigation is made by the Trade Representative under section 302(c).

(3) CONSULTATION.—Before the **[**President**]** *Trade Representative,* takes action under subsection (b) or (c) involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

[(d) PRESIDENTIAL PROCEDURES.—

[(1) ACTION ON OWN MOTION.—If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

[(2) ACTION REQUESTED BY PETITION.—Not later than 21 days after the date on which he receives the recommendation of the Trade Representative under section 304 with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.**]**

(d) Procedures.—

(1) ACTION AFTER TRADE REPRESENTATIVE DECISIONS.—

(A) IN GENERAL.—Unless subparagraph (B) applies the Trade Representative, subject to the specific direction, if any, of the President, within 30 days after making a decision under section 304 or 308(b) to take action under subsection (a)(1)(A) or (C) shall implement the action.

(B) DELAY IN IMPLEMENTING ACTION.—The Trade Representative may delay, by not more than 90 days, the implementation of an action under subsection (b) or (c), or both—

(i) if either—

(I) in the case of an investigation initiated under section 302(b), the petitioner requests a delay, or

(II) in the case of an investigation initiated under section 302(c), a delay is requested by the domestic industry that would benefit from the action; or

(ii) the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable, to obtain United States rights or a satisfactory solution with respect to the act, policy, or practice, or export targeting concerned.

(2) Notice.—The Trade Representative shall promptly cause notice to be published in the Federal Register of—

(A) each determination made under paragraph (A);

(B) each delay decided upon under subparagraph (1)(B);

(C) the reasons for the determination or delay; and

(D) if the determination is to impose an import restriction, the likely impact, if any, of the restriction on United States agricultural exports.

(e) Definitions; Special Rule for Vessel Construction Subsidies.—For purposes of this [section] *chapter—*

(1) Commerce.—The term "commerce" includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) Vessel construction subsidies.—An act, policy, or practice of a foreign country [or instrumentality] that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country [or instrumentality] of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

[(3) Unreasonable.—The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable—

[(A) market opportunities;

[(B) opportunities for the establishment of an enterprise; or

[(C) provision of adequate and effective protection of intellectual property rights.]

(3) Unreasonable.—

(A) In general.—The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. In determining whether an act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into

account, to the extent appropriate. The term includes, but is not limited to, any act, policy, or practice that—

(i) subject to subparagraph (B), with respect to workers—

(I) denies the right of association,

(II) denies the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, and

(V) taking into account a country's level of economic development, standards for minimum wages, hours of work, and occupational safety and health; or

(ii) denies fair and equitable—

(I) market opportunities, including the toleration by a government of systematic anticompetitive activities by private firms or among private firms in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods to purchasing by such firms,

(II) opportunities for the establishment of an enterprise, or

(III) provision of adequate and effective protection of intellectual property rights.

(4) Unjustifiable.—

(A) In general.—The term "unjustifiable" means any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Certain actions included.—The term "unjustifiable" includes, but is not limited to, any act, policy or practice described in subparagraph (A) which denies national or most-favored-nation treatment, the right of establishment, or protection of intellectual property rights.

(5) Definition of discriminatory.—The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) Service sector access authorization.—The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

(7) Foreign country.—The term "foreign country" includes any foreign instrumentality.

(8) Export targeting.—The term "export targeting" means any government plan or scheme consisting of a combination of coordinated actions, whether carried out severally or jointly, that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist the enterprise, industry,

or group to become more competitive in the export of a class or kind of merchandise.

(9) INTERESTED PERSONS.—For purposes of sections 301(d)(1), 302(b)(2)(B), 304(b)(1), and 307(b), the term "interested persons" includes, but is not limited to, domestic firms and workers, representatives of consumer interests, and United States product exporters that may be affected.

SEC. 302. INITIATION OF INVESTIGATIONS BY UNITED STATES TRADE REPRESENTATIVE.

(a) FILING OF PETITION.—

[(1) IN GENERAL.—Any interested person may file a petition with the United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative" requesting the President to take action under section 301 and setting forth the allegations in support of the request.]

(1) IN GENERAL.—Any interested person may file a petition with the Trade Representative requesting that action be taken under section 301 and setting forth the allegations in support of the request.

* * * * * * *

(c) DETERMINATION TO INITIATE BY MOTION OF TRADE REPRESENTATIVE.—

(1) DETERMINATION TO INITIATE.—If the Trade Representative determines with respect to any matter that an investigation should be initiated in order to [advise the President concerning the exercise of the President's authority] *determine whether the matter is actionable* under section 301, the Trade Representative shall publish such determination in the Federal Register and such determination shall be treated as an affirmative determination under subsection (b)(2).

* * * * * * *

(d) OBTAINING INFORMATION.—

(1) IN GENERAL.—With respect to any investigation initiated under subsection (b)(2), the Trade Representative shall direct to the foreign countries relevant to the investigation such inquiries as the Trade Representative considers appropriate for the purpose of obtaining information relevant to the decisions required under section 304(a).

(2) VERIFICATION AND USE OF BEST INFORMATION OTHERWISE AVAILABLE.—The Trade Representative may, as to any information furnished in response to an inquiry under paragraph (1), request that the foreign country furnishing such information provide such documentation, or permit such verification, of the information as the Trade Representative considers appropriate. With respect to any information requested in an inquiry under paragraph (1) which is either—

(A) not furnished in a timely manner;

(B) is furnished in incomplete or inadequate form; or

(C) is not documented or verified to the extent considered sufficient by the Trade Representative.

the Trade Representative may disregard all or any part of such information, and instead use the best information otherwise *available for purposes of making the determinations and recommendations required under section 304(a).*

SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.

(a) IN GENERAL.—On the date an affirmative determination is made under section 302(b), the Trade Representative, on behalf of the United States, shall request consultations with the foreign country [or instrumentality] concerned regarding issues raised in the petition or the determination of the Trade Representative under section 302(c)(1). [If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement.] *If the case involves a trade agreement and a mutually acceptable resolution is not reached before the earlier of—*

(A) the close of the consultation period, if any, specified in the trade agreement; or

(B) the 150th day after the day on which consultation was commenced;

the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate representatives provided for under section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

(b) DELAY OF REQUEST FOR CONSULTATIONS FOR UP TO 90 DAYS.—

(1) IN GENERAL.—Notwithstanding the provisions of subsection (a)—

(A) the United States Trade Representative may, *after consulting with the petitioner,* delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 304 shall be extended for the period of such delay.

* * * * * * *

[SEC. 304. RECOMMENDATIONS BY THE SPECIAL REPRESENTATIVE

[(a) RECOMMENDATIONS.—

[(1) IN GENERAL.—On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Trade Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the matters under investigation. The Trade Representative shall make that recommendation not later than—]

SEC. 304. DECISIONS BY THE TRADE REPRESENTATIVE.

(a) DECISIONS.—

(1) IN GENERAL.—On the basis of the investigation under section 302 and the consultations (and the proceedings, if applica-

ble) under section 303 and subject to subsection (b), the Trade Representative shall determine whether—

(A) the rights to which the United States is entitled under any trade agreement are being denied, or

(B) any act, policy, or practice described in section 302(a) exists;

and if the determination is affirmative, shall decide, as the case may be what action, if any, he should take under section 301(a)(1)(A) or (C)(2).

(2) SPECIAL RULE FOR DETERMINATIONS INVOLVING WORKER RIGHTS.—The Trade Representative may determine an act, policy, or practice described in section 301(e)(3)(A)(i) not to be unreasonable if the Trade Representative finds that the foreign country concerned has taken, or is taking, steps that demonstrate a significant and measurable overall advancement to afford throughout the country (including any designated zone within the country) the rights and other standards described in subclause (I) through (V) of such section.

(3) TIME FOR MAKING DECISIONS.—The Trade Representative shall make the decision required under paragraph (1) not later than—

(A) 7 months after the date of the initiation of the investigation under section 302(b)(2) if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the "Subsidies Agreements");

(B) 8 months after the date of the investigation initiation if the petition alleges *exclusively* any matter covered by the Subsidies Agreement other than only an export subsidy;

(C) in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded, *or 18 months after the date of the investigation initiation, whichever first occurs,* or

(D) 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C). *The Trade Representative shall make a determination under section 301(a)(1)(C) or (2)(B), as the case may be, regarding whether export targeting exists and is, or threatens to be, a significant burden or restriction on United States commerce within 6 months after the investigation regarding the alleged targeting is initiated under section 302. The Trade Representative may consult with appropriate Federal agencies before making such a determination.*

[(2)**]** *(4)* SPECIAL RULE.—In the case of any petition—

(A) an investigation with respect to which is initiated on or after the date of the enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and

(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph **[**(1)**]***(3)* would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country **[**or instrumentality**]** before the 12-month period referred to in subparagraph (B) expires, the Trade Representative shall make the recommendation required under paragraph **[**(1)**]***(3)* with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country **[**or instrumentality**]** concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

[(3)**]***(5)* REPORT IF SETTLEMENT DELAYED.—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph **[**(1)(C)**]***(3)(C)* (other than the Subsidies Agreement), the Trade Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

[(b) CONSULTATION BEFORE RECOMMENDATION.—Before recommending that the President take action under section 301 with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 302, the Trade Representative, unless he determines that expeditious action is required—**]**

(b) CONSULTATION BEFORE DECISION.—Before deciding upon an action to be taken by him under section 301(a)(1) (A) or (C) or (2) with respect to the treatment of any product or service of a foreign country which is the subject of a petition under section 302, the Trade Representative, unless he determines that expeditious action is required—

[(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;**]**

(A) shall provide opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, and such opportunity shall include a public hearing, if requested by any interested person;

(B) shall, if export targeting is involved, consult with representatives of the United States industry and workers af-

fected by the targeting, and with other interested persons, with respect to the nature of the appropriate remedial action, including possible measures to enhance the international competitiveness of that industry;

[(2)] *(C)* shall obtain advice from the appropriate advisory representatives provided for under section section 135; and

[(3)] *(D)* may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Trade Representative does not comply with [paragraphs (1) and (2)] *subparagraphs (A), (B), and (C)* because expeditious action is required, he shall, after making the recommendation concerned to the President, comply with such paragraphs.

SEC. 305. REQUESTS FOR INFORMATION.

(a) IN GENERAL.—Upon receipt of written request therefor from any person, the Trade Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign government [or instrumentality] with respect to particular [merchandise] *goods, services, investment, or intellectual property rights* to the extent that such information is available to the Trade Representative or other Federal agencies;

* * * * * * *

(b) IF INFORMATION NOT AVAILABLE.—If information that is requested by [an interested party] *a person* under subsection (a) is not available to the Trade Representative or other Federal agencies, the Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for the refusal.

SEC. 306. ADMINISTRATION.

The Trade Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this chapter;

(2) keep the petitioner regularly informed of all determinations and developments regarding his case under this section, including the reasons for any undue delays; and

(3) submit a report to the House of Representatives and the Senate semiannually describing the petitions filed and the determinations made (and reasons therefor) under section 302, developments in and current status of each such proceeding, [and the actions taken, or the reasons for no action, by the President under section 301.] *the actions taken, or the reasons for no action, by the President under section 301, and the commercial effects of actions taken under such section.*

SEC. 307. MODIFICATION AND TERMINATION OF ACTIONS.

(a) IN GENERAL.—The Trade Representative may modify or terminate an action taken by him under section 301 if—

(1) the Contracting Parties to the GATT have determined, or a panel of experts has reported to the Contracting Parties, that—

(A) the action violates, or is inconsistent with, the international obligations of the United States, or

(B) the foreign act, policy, or practice to which the action responds—

(i) is not a violation of a trade agreements, or

(ii) is not inconsistent with the provisions of, or otherwise does not otherwise deny, nullify, or impair benefits to the United States under, any trade agreement; or

(2) the Trade Representative determines that—

(A) the foreign act, policy, or practice has been eliminated or is being phased out in a manner satisfactory to him, or

(B) the action is not effective or its continuation is not in the national economic interest.

(b) Biennial Review and Assessment.—The Trade Representative shall, on a biennial basis, review and assess the results and commercial effects of each action taken under section 301. On the basis of such review, the Trade Representative shall decide whether the modification or termination of any prior action taken by him under section 301(a)(1) (A) or (C) or (2) is appropriate. During the review, the Trade Representative shall consult with the petitioner, if any, representatives of the domestic industry concerned, and shall provide opportunity for the presentation of views by other interested persons affected by the action under review concerning its effectiveness and whether any modification or termination of the action is indicated.

(c) Notice; Report to Congress.—The Trade Representative shall promptly cause notice to be published in the Federal Register of, and report in writing to Congress with respect to, any modification or termination of an action that is implemented under subsection (a) and the reasons therefor.

SEC. 308. MONITORING OF FOREIGN COMPLIANCE.

(a) In General.—The Trade Representative shall monitor the implementation of each measure undertaken, or agreement of a kind described in section 301(a)(1), (c)(ii) (I), (II), or (III) or (D)(i)(II) that is entered into under section 301(a) (1) or 2, by a foreign country—

(1) to enforce the rights of the United States under any trade agreement;

(2) to eliminate any act, policy, or practice described in section 301(a)(1)(A)(ii) or (B)(ii) or (2)(A); or

(3) to eliminate export targeting.

(b) Further Action.—If, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall decide what further action he shall take, section 301(a)(1). For purposes of section 301, any such decision shall be treated as a decision made under section 304(a)(1).

(a) Consultations.—Before making any decision or recommendation under subsection (b), the Trade Representative shall—

(1) consult with the petitioner, if any, involved in the initial investigation under this chapter and with representatives of the domestic industry concerned; and

(2) provide an opportunity for the presentation of views by interested persons.

Subchapter B—Special Provisions Regarding Trade Deficits

SEC. 311. MANDATORY NEGOTIATIONS AND ACTION REGARDING FOREIGN COUNTRIES HAVING EXCESSIVE AND UNWARRANTED TRADE SURPLUSES.

(a) DETERMINATION OF EXCESSIVE TRADE SURPLUS COUNTRIES.—

(1) DETERMINATIONS.—The United States International Trade Commission (hereinafter referred to as the "Commission"), on the basis of the best available trade data, shall—

(A) determine whether each major exporting country is an excessive trade surplus country for each year occurring within the period beginning on January 1, 1987, and ending December 31, 1990; and

(B) determine if the percentage obtained by dividing—

(i) the deficit of the United States, if any, in the merchandise balance of trade between the United States and the rest of the world during each of such years, by

(ii) the gross national product of the United States for such year, is less than 1.5 percent.

(2) REPORTS.—The Commission shall make the determinations required under paragraph (1), and prepare and submit to the Trade Representative a report thereon, by April 1 of the year after the year with respect to which the determinations apply; except that the determinations for 1986 must be made, and the report submitted, by August 1, 1987.

(3) PUBLICATION IN FEDERAL REGISTER.—Each report submitted to the Trade Representative under paragraph (2) shall be published in the Federal Register.

(4) SUSPENSION OF APPLICATION OF SECTION.—For any year for which the Commission reports that the percentage referred to in paragraph (1)(B) is less than 1.5 percent—

(A) no determinations are required under subsection (b)(1) for that year; and

(B) no actions may be taken under subsection (e) during that year.

(b) DESIGNATION OF EXCESSIVE AND UNWARRANTED TRADE SURPLUS COUNTRIES.—

(1) DETERMINATIONS.—The Trade Representative shall, during the 15-day period beginning on the day after the day on which a report is submitted under subsection (a)(2), determine whether each major exporting country identified as an excessive trade surplus country in the report maintained, during the year to which the report applies, a pattern of act, policies, or practices that——

(A) are unjustifiable, unreasonable, or discriminatory; and

(B) have an adverse effect on United States commerce and contribute to the excessive trade surplus of that country.

(2) Factors.—*In making determinations under paragraph (1), the Trade Representative shall take into account—*

(A) information submitted under section 181;

(B) the decisions, if any, for action made under section 304 with respect to that country;

(C) countervailing duty and antidumping duty actions taken under section 303 and title VII of the Tariff Act of 1930 with respect to merchandise of that country;

(D) adverse determinations under the GATT relating to that country; and

(E) any other relevant information pertaining to the trade practices or policies of that country, including, but not limited to, the existence of discriminatory government procurement, excessive government regulation designed to discriminate against imported products, governmental tolerance of extensive dumping in foreign markets, export subsidy and targeting policies, excessive tariff barriers, and any other illegal trade barrier.

(3) Designation.—*If not designated as an excessive and unwarranted trade surplus country for the preceding year, a major exporting country with respect to which affirmative determinations are made under subsection (a)(1) and paragraph (1) for the same year shall, on the last day of the 15-day period referred to in paragraph (1), be designated as an excessive and unwarranted trade surplus country for such same year and such designation shall remain in effect until terminated.*

(4) Termination of designations.—*The designation of a major exporting country as an excessive and unwarranted trade surplus country shall terminate if a negative determination is made by the Commission under subsection (a)(1) with respect to any year, or by the Trade Representative under paragraph (1) with respect to any year. The termination shall apply for the year in which either of such negative determinations is made and shall continue in effect until affirmative determinations, if any, regarding that country are made under subsection (a)(1) and paragraph (1) with respect to any subsequent year.*

(5) List.—*The Trade Representative shall publish in the Federal Register, by the 10th day after the last day of the 15-day period referred to in paragraph (1), a list of all major exporting countries the designations of which as excessive and unwarranted trade surplus countries have not been terminated.*

(c) Negotiations.—

(1) In general.—*During the 180-day period after the 15-day period referred to in subsection (b)(1), the Trade Representative shall enter into negotiations with each foreign country that was designated as an excessive and unwarranted trade surplus country on the last day of that 15-day period under subsection (b)(2) for the purpose of entering into a bilateral trading arrangement providing for—*

(A) the substantial reduction of any unjustifiable, unreasonable, or discriminatory acts, policies, or practices of the

foreign country that were determined under subsection (b)(1); or

(B) the substantial reduction of the adverse effect which such acts, policies, and practices have on United States commerce.

(2) Factors.—In deciding whether the terms of an arrangement will achieve the substantial reduction requirement under paragraph (1), the Trade Representative shall, to the extent possible, estimate the commercial value of the practices referred to in paragraph (1)(A) and must be satisfied that the terms will allow United States firms a realistic opportunity to improve their share of trade with that country by an amount equal to that value.

(3) Extension.—If the Trade Representative considers that further negotiations with a foreign country are necessary to reach an arrangement under paragraph (1), the Trade Representative may extend the 180-day period referred to in paragraph (1) by not more than an additional 60 days.

(d) ACTION BY THE UNITED STATES TRADE REPRESENTATIVE.—

(1) In general.—If the Trade Representative is unable to enter into a bilateral arrangement under subsection (c) with an excessive and unwarranted trade surplus country to achieve the objectives set forth in paragraph (1) of that subsection, the Trade Representative, subject to the specific direction, if any, of the President, shall, after the close of the 180-day negotiating period (or the last day of that period as extended under subsection (c)(3)), take any of the actions specified in section 301(b) that he considers necessary or appropriate with regard to each unjustifiable, unreasonable, or discriminatory act, policy, or practice of the country that was determined under subsection (b)(1) or became apparent during the negotiating period. Any action taken under this subsection shall be devised so as to affect goods or services of such country in an amount that is equivalent in vaiue to the burden or restriction being imposed by the country on United States commerce.

(2) Modification and termination.—The Trade Representative may modify of terminate any action taken under paragraph (1). Section 307 applies to modifications and terminations made under paragraph (1) in the same manner and the same extent as it applies to actions taken under section 301.

(e) Waiver.—

(1) In general.—Subject to paragraph (2), Trade Representative, subject to the specific direction, if any, of the President, may waive the taking of any action under subsection (d) with respect to one or more of the acts, policies, or practices of a foreign country if he considers that the taking of any such action with respect to—

(A) any unjustifiable act, policy, or practice would result in the national economic interest of the United States being more affected, to a significantly adverse extent, than if such action were not taken; or

(B) any unreasonable or discriminatory act, policy, or practice would result in the national economic interest of

the United States being more adversely affected than if such action were not taken.

(2) CONDITIONS AFFECTING WAIVERS.—

(A) CONGRESSIONAL NOTIFICATION.—No waiver under paragraph (1) with respect to any excessive and unwarranted trade surplus country shall have force and effect unless the Trade Representative submits to the Congress within 10 days after the close of the negotiating period under subsection (d) a document stating his intention to implement such waiver.

(B) CONGRESSIONAL DISAPPROVAL.—No waiver under paragraph (1) with respect to any excessive and unwarranted trade surplus country shall have force and effect if a joint resolution described in section 152(a)(1)(C) is enacted within the 60-day period beginning on the date on which the document referred to in subparagraph (A) regarding the waiver is submitted to Congress.

(f) CURRENCY MANIPULATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall determine if any foreign country that is designated as an excessive surplus country is maintaining its currency at an artificially low level that does not reflect the country's competitive strength in international trade.

(2) NEGOTIATIONS.—The Secretary of the Treasury shall initiate negotiations with the government of each foreign country with respect to which an affirmative determination is made under paragraph (1) for the purpose of entering into an agreement under which realistic realignments of that country's currency will be ensured.

(3) ACTION IF NEGOTIATIONS UNSUCCESSFUL.—If the government of a foreign country refuses to negotiate, or to enter into an agreement described in paragraph (2), the President may direct the Secretary of the Treasury to impose an exchange rate equalization tariff on the products of such country that are imported into the United States.

(g) ROUNDING OF TRADE STATISTICS.—For purposes of this section, any trade statistic or limitation shall—

(1) be rounded off to the nearest billion dollars; and

(2) shall be adjusted to reflect the fact that certain products of the United States may not, under law, be exported.

(h) CPI ADJUSTMENT.—For each year after 1986, the Trade Representative shall adjust the dollar limitation set forth in subsection (i)(2) and (5) to reflect the percentage increase or decrease in the Consumer Price Index, published by the Bureau of Labor Statistics of the Department of Labor, for the preceding year.

(i) DEFINITIONS.—For purposes of this section—

(1) The term "excessive trade surplus country" means any major exporting country which has—

(A) a bilateral export percentage for the year that exceeds 175 percent;

(B) a bilateral trade surplus for the year; and

(C) a global trade surplus for the year.

For purposes of subparagraph (C), a global trade surplus exists if the aggregate value of all merchandise exported from the *country during the year exceeds the aggregate value of all merchandise imported into the country during the year.*

(2) A foreign country is a major exporting country for a year if the aggregate value of the merchandise trade between such foreign country and the United States during such year is more than $7,000,000,000.

(3) The term "foreign country" includes any instrumentality of a foreign country.

(4) The term "bilateral export percentage" means, with respect to any foreign country for any year, the percentage determined by dividing—

(A) the aggregate value of nonpetroleum products of such country exported to the United States during such year; by

(B) the aggregate value of nonpetroleum products of the United States imported into such country during such year.

(5) The term "bilateral trade surplus" means, with respect to any foreign country for any year, an excess of—

(A) the aggregate value of nonpetroleum products of such country exported to the United States during such year; over

(B) the aggregate value of nonpetroleum products of the United States imported into such country during such year;

if such excess is at least $3,000,000,000.

(6) The term "nonpetroleum product" means any merchandise other than merchandise classified to division 33 of the Standard International Trade Classification (revision II) published by the United Nations.

(7) The term "value" means—

(A) with respect to merchandise imported into the United States, the customs valuation under the Tariff Act of 1930 of those imports, plus all freight, insurance, and other charges incurred regarding the importation (excluding United States tariffs and import excise taxes), and

(B) with respect to merchandise imported into a foreign country, the transaction prices of such imports plus the freight, insurance, and other charges determined by the Secretary of the Treasury that are incurred in placing the exports alongside the carriers at the United States ports of export.

(8) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(9) The term "entry" includes any withdrawal from warehouse for consumption.

(10) The term "best trade data available" means—

(A) with regard to data on the international trade of the United States, official trade information, including the estimates required under section 181, of the United States Government, and

(B) with regard to data on the international trade of any other country, data that the Commission determines is the most reliable data available for the period under consideration, and may include estimates if the actual data re-

quired by this section, or the forms of the data required by this section, are not directly available.

(11) Any article that is grown, produced, or manufactured in a country is a product of such country.

(12) Any reference to a year in this section shall be treated as a reference to a calendar year.

(j) Termination of Effect of Section.—Neither this section nor any action taken, or agreement entered into, under the authority of this section shall have force and effect after December 31, 1990.

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TITLE IV—TRADE RELATIONS WITH COUNTRIES NOT CURRENTLY RECEIVING NONDISCRIMINATORY TREATMENT

* * * * * * *

SEC. 406. MARKET DISRUPTION.

(a)(1) Upon the filing of a petition by an entity described in section [201(a)(1)] *201(a),* upon request of the President or the United States Trade Representative upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a [Communist] *nonmarket economy* country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of [subsections (a)(2), (b)(3), and (c) of section 201] *sections 201(b) and 203(d) and (e)(3)* shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the [President] *United States Trade Representative* its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the [President] *United States Trade Representative.* The Commission shall furnish to the [President] *United States Trade Representative* a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the [President] *United States Trade Representative,* the Commission shall also promptly make public such report, (with the exception of information which the

Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) For purposes of [sections 202 and 203] *section 204,* an affirmative determination of the Commission under subsection (a) shall be treated as an affirmative determination under section [201(b).] *203(a),* except that—

(1) the [President] *United States Trade Representative* may take action under [sections 202 and 203] *section 204* only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made, and

(2) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) If, at any time, the [President] *United States Trade Representative* finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a [Communist] *nonmarket economy* country, that market disruption exits with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the [President] *United States Trade Representative* further finds that emergency action is necessary, he may take action under sections [202 and 203] *204* as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the [President] *United States Trade Representative* under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the [President] *United States Trade Representative,* or (2) if an affirmative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the action taken by the [President] *United States Trade Representative* pursuant to such determination becomes effective.

(d)(1) A petition may be filed with the [President] *United States Trade Representative* by an entity described in section 201(a)[(1)] requesting the [President] *United States Trade Representative* to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the [President] *United States Trade Representative* determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

[(e) For purposes of this section—

[(1) The term "Communist country" means any country dominated or controlled by communism.

[(2) Market disruption exists within a domestic industry whenever imports of an article like or directly competitive with an article produced by such domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.]

(e) For purposes of this section, the term "nonmarket economy country" means any country in which economic activity, as a whole, is generally determined through central government planning rather than being dependent on market forces.

(f)(1) For purposes of this section, market disruption exists within a domestic industry whenever an article is being imported into the United States in such increased quantities (either absolutely or relatively) as to be an important cause of material injury or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(2) In making its determination under paragraph (1), the Commission shall consider, among other factors—

(A) the volume of imports of the merchandise which is the subject of the investigation;

(B) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(C) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(D) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

(3) For purposes of paragraph (2)—

(A) In evaluating the volume of imports of merchandise, the Commission shall consider whether the increase in the volume of imports of the merchandise, either in absolute terms or relative to production or consumption in the United States, is significant.

(B) In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(i) there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States, and

(ii) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(C) In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(i) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity.

(ii) factors affecting domestic prices, and

(iii) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(4) In making its determination under paragraph (1), the Commission shall, where appropriate, cumulate imports from 2 or more nonmarket economy countries subject to investigation under this section.

(g) The Commission may recommend, in addition to other relief available under this section, a variable tariff that is equivalent to the average of—

(1) the average price at which United States producers of merchandise that is like or similar to the article under investigation sell, or offer to sell, the merchandise in arms length transactions; and

(2) the average price at which imported merchandise that is like or similar to the article under investigation is sold, or offered for sale, in the United States in arms length transactions.

(h) The Trade Representative may deny import relief with respect to imports from a nonmarket economy country only if the provision of such relief would have a serious negative impact on the domestic economy.

* * * * * * *

TITLE V—GENERALIZED SYSTEM OF PREFERENCES

SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

The [President] *United States Trade Representative* may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the [President] *United States Trade Representative* shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

SEC. 502. BENEFICIARY DEVELOPING COUNTRY.

(a)(1) For purposes of this title, the term "beneficiary developing country" means any country [with respect to which there is in effect an Executive order or Presidential proclamation by the President of the United States designating such country] *which is designated by the United States Trade Representative* as a beneficiary developing country for purposes of this title. Before the President designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(2) If the [President] *United States Trade Representative* has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation [(either by issuing an Executive order or Presidential proclamation for that purpose or by issuing an Executive order or Presidential proclamation which has the effect of terminating such designation)] unless, at least 60 days before such termination, he has notified the House

of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the [President] *United States Trade Representative* may [by Executive order or Presidential proclamation] provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

* * * * * * *

(b) No designation shall be made under this section with respect to any of the following:

Australia
Austria
Canada
Czechoslovakia
European Economic Community members states
Finland
Germany (East)
Iceland
Japan
Monaco
New Zealand
Norway
Poland
Republic of South Africa
Sweden
Switzerland
Union of Soviet Socialist Republics

In addition, the [President] *United States Trade Representative* shall not designate any country a beneficiary developing country under this section—

(1) * * *

* * * * * * *

(3) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the [President] *United States Trade Representative* has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(4) if such country—

(A) * * *

* * * * * * *

(D) the [President] *United States Trade Representative* determines that—

(i) * * *

* * * * * * *

Paragraphs (4), (5), (6), (7), and (8) shall not prevent the designation of any country as a beneficiary developing country under this section if the [President] *United States Trade Representative* determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary developing country under this section, the [President] *United States Trade Representative* shall take into account—

(1) * * *

* * * * * * *

(e) The [President] *United States Trade Representative* may exempt from the application of paragraph (2) of subsection (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

(2) The [President] *United States Trade Representative* may exempt from the application of paragraph (2) of subsection (b) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act of 1974 before January 3, 1980. The [President] *United States Trade Representative* shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or terminates the delivery of supplies of petroleum and petroleum products to the United States.

SEC. 503. ELIGIBLE ARTICLES.

(a) The [President] *United States Trade Representative* shall, from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. [Before any such list is furnished to the Commission, there shall be in effect an Executive order or Presidential proclamation under section 502 designating beneficiary developing countries.] *Before any such list is furnished to the Commission, there shall be in effect a designation of beneficiary developing countries under section 502.* The provisions of sections 131, 132, 133, and 134 of this Act shall be complied with as though action under section 501 were action under section 101 of this Act to carry out a trade agreement entered into under section 101. After receiving the advice of the Commission with respect to the listed articles, the [President] *United States Trade Representative* shall designate those articles he considers appropriate to be eligible articles for purposes of this title by Executive order or Presidential proclamation.

* * * * * * *

(c)(1) The [President] *United States Trade Representative* may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles—

(A) textile and apparel articles which are subject to textile agreements.

[(B) watches,]

(B) watches, except those watches the United States Trade Representative specifically determines, after public notice and comment, will not cause material injury to watch manufacturing and assembly operations in the United States or the United States insular possessions,

(C) import-sensitive electronic articles,

(D) import-sensitive steel articles,

(E) footwear, handbages, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on April 1, 1984,

(F) import-sensitive semimanufactured and manufactured glass products, and

(G) any other articles which the [President] *United States Trade Representative* determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

SEC. 504. LIMITATIONS ON PREFERENTIAL TREATMENT.

(a)(1) The [President] *United States Trade Representative* may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this title. In taking any action under this subsection, the [President] *United States Trade Representative* shall consider the factors set forth in sections 501 and 502(c).

(2) The [President] *United States Trade Representative* shall, as necessary, advise the Congress and, by no later than January 4, 1988, submit to the Congress a report on the application of sections 501 and 502(c), and the actions the [President] *United States Trade Representative* has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in section 502(c).

(b) The [President] *United States Trade Representative* shall, after complying with the requirements of section 502(a)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b). Such country shall cease to be a beneficiary developing country on the day on which the [President issues an Executive order or Presidential proclamation revoking] *United States Trade Representative revokes* his designation of such country under section 502.

(c)(1) Subject to paragraphs (2) through (7) and subsection (d), whenever the **[**President**]** *United States Trade Representative* determines that any country—

(A) * * *

* * * * * * *

(2)(A) Not later than January 4, 1987, and periodically thereafter, the **[**President**]** *United States Trade Representative* shall conduct a general review of eligible articles based on the considerations decribed in section 501 or 502(c).

(B) If, after any review under subparagraph (A), the **[**President**]** *United States Trade Representative* determines that this subparagraph should apply because a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article, then paragraph (1) shall be applied to such country with respect to such article by substituting—

(i) "1984" for "1974" in subparagraph (A), and

(ii) "25 percent" for "50 percent" in subparagraph (B).

(3)(A) Not earlier than January 4, 1987, the **[**President**]** *United States Trade Representative* may waive the application of this subsection with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made with respect to such eligible article, the **[**President**]** *United States Trade Representative*—

(i) * * *

* * * * * * *

(B) In making and determination under subparagraph (A), the **[**President**]** *United States Trade Representative* shall give great weight to—

(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

(C)(i) Not earlier than January 4, 1987, the President shall waive the application of this subsection with respect to any eligible article of any beneficiary developing country that—

(I) qualifies for waiver under subparagraphs (A) and (B);

(II) is determined by the President to have difficulty servicing the debt it owes to foreign or multilateral sources; and

(III) has not less than 20 percent of the debt that it owes to foreign or multilateral sources held by any combination of United States banks, the International Monetary Fund, and the World Bank.

(ii) The aggregate value of articles to which waivers made under clause (i) may apply for any calendar year may not exceed the aggregate value of the articles with respect to which countries, on the

basis of exports during the preceding calendar year, are no longer treated under this subsection as beneficiary developing countries.

(iii) The President shall allocate the aggregate value waived under clause (i) for any calendar year among beneficiary developing countries referred to in that clause. In deciding which, if any, of such countries and which eligible articles to include in an allocation, the President shall give great weight to—

(II) the amount of foreign and multilateral debt of each such country, relative to the gross national product of that country;

(ii) the estimated percentage of export earnings that each country would be required to devote to servicing foreign and multilateral debt under existing contracts;

(III) the trade surplus that each country holds with the United States, relative to that country's level of debt outstanding to foreign or multilateral sources; and

(IV) the extent to which each country is undertaking good faith efforts to meet its debt obligations.

[C**]***(D)* Any waiver granted pursuant to this paragraph shall remain in effect until the **[**President**]** *United States Trade Representative* determines that such waiver is no longer warranted due to changed circumstances.

[D**]***(E)*(i) The **[**President**]** *United States Representative* may not exercise the waiver authority provided under **[**subparagraph (A)**]** *subparagraphs (A) and (C)* with respect to a quantity of eligible articles entered in any calendar year which exceeds an aggregate value equal to 30 percent of the total value of all articles which entered duty-free under this title during the preceding calendar year.

(ii) The **[**President**]** *United States Trade Representative* may not exercise the waiver authority provided under **[**subparagraph (A)**]** *subparagraphs (A) and (C)* with respect to a quantity of eligible articles entered from any beneficiary developing country during any calendar year beginning after 1984 which exceeds 15 percent of the total value of all articles that have entered duty-free under this title during the preceding calendar year if for the preceding calendar year such beneficiary developing country—

(I) * * *

* * * * * * *

(4) Except in any case to which paragraph (2)(B) applies, the **[**President**]** *United States Trade Representative* may waive the application of this subsection if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made, the **[**President**]** *United States Trade Representative* determines and publishes in the Federal Register that, with respect to such country—

(A) * * *

* * * * * * *

(6)(A) This subsection shall not apply to any beneficiary developing country which the **[**President**]** *United States Trade Representative* determines, based on the considerations described in sections 501 and 502(c), to be a least-developed beneficiary developing country.

(B) The **[**President**]** *United States Trade Representative* shall—

(i) * * *

* * * * * * *

(d)(1) Subsection (c)(1)(B) (after application of subsection (c)(2)) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

(2) The [President] *United States Trade Representative* may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

* * * * * * *

(f)(1) If the [President] *United States Trade Representative* determines that the per capital gross national product (calculated on the basis of the best available information, including that of the World Bank) of any beneficiary developing country for any calendar year (hereafter in this subsection referred to as the "determination year") after 1984, exceeds the applicable limit for the determination year—

(A) * * *

* * * * * * *

SEC. 505. TERMINATION OF DUTY-FREE TREATMENT AND REPORTS.

(a) No duty-free treatment provided under this title shall remain in effect after July 4, 1993.

(b) On or before January 4, 1990, the [President] *United States Trade Representative* shall submit to the Congress a full and complete report regarding the operation of this title.

(c) The [President] *United States Trade Representative* shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

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TRADE AND TARIFF ACT OF 1984

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TITLE II— CUSTOMS AND MISCELLANEOUS AMENDMENTS

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SUBTITLE C—MISCELLANEOUS PROVISIONS

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SEC. 236. USER FEE FOR CUSTOMS SERVICES AT CERTAIN SMALL AIRPORTS.

(a) The Secretary of the Treasury shall make customs services available and charge a fee for the use of such customs services at—

(1) the airport located at Lebanon, New Hampshire, [and]

(2) the airport located at Pontiac/Oakland, Michigan, and

[(2)] *(3)* any other airport designated by the Secretary of the Treasury under subsection (c).

* * * * * * *

(c) The Secretary of the Treasury may designate [20] airports under this subsection. An airport may be designated under this subsection only if—

(1) the Secretary of the Treasury has made a determination that the volume or value of business cleared through such airport is insufficient to justify the availability of customs services at such airport, and

(2) the governor of the State in which such airport is located approves such designation.

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SEC. 307. NEGOTIATING AUTHORITY WITH RESPECT TO FOREIGN DIRECT INVESTMENT.

(a) * * *

(b)(1) * * *

* * * * * * *

(4) Whenever the international obligations of the United States and actions taken under paragraph (2) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 123 of the Trade Act of 1974 (19 U.S.C. 2133) for providing compensation for [actions taken under section 203] *import relief provided under chapter 1 of title II* of that Act.

* * * * * * *

SEC. 403. APPLICATION OF CERTAIN OTHER TRADE LAW PROVISIONS.

(a) * * *

(b) ITC Reports.—In any report by the United States International Trade Commission (hereinafter referred to in this title as the "Commission") to the [President under section 201(d)(1)] *United States Trade Representative under section 203* of the Trade Act of 1974 regarding any article for which a reduction or elimination of any duty is provided under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the Commission shall state whether and to what extent its findings and recommendations apply to such an article when imported from Israel.

(c) For purposes of [subsections (a) and (c) of section 203] *chapter 1 of title II* of the Trade Act of 1974, the suspension of the reduction or elimination of a duty under subsection (a) shall be treated as an increase in duty.

(d) No proclamation which provides solely for a suspension referred to in subsection (a) with respect to any article shall be made under [subsections (a) and (c) of section 203] *chapter 1 of title II* of the Trade Act of 1974 unless the Commission, in addition to making an affirmative determination with respect to such article under section [201(b)] *203(g)* of the Trade Act of 1974, determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974.

(e)(1) Any proclamation issued under [section 203] *chapter 1 of title II* of the Trade Act of 1974 that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 shall remain in effect until modified or terminated.

(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the President may reduce or terminate the application of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of [subsections (h) and (i) of section 203] *section 205* of the Trade Act of 1974.

SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

(a) If a petition is filed with the Commission under the provisions of section 201 of the Trade Act of 1974 regarding a perishable product which is subject to any reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 and alleges injury from imports of that product, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under subsection (c) with respect to such article.

(b) Within 14 days after the filing of a petition under subsection (a)—

(1) if the Secretary of Agriculture has reason to believe that a perishable product from Israel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the [President] *United States Trade Representative* and recommend that the [President] *United States Trade Representative* take emergency action; or

(2) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(c) Within 7 days after the [President] *United States Trade Representative* receives a recommendation from the Secretary of Agriculture to take emergency action under subsection (b), he shall issue a proclamation withdrawing the reduction or elimination of duty provided to the perishable product under any trade agreement provision entered into under section 102(b)(1) of the Trade Act of 1974 or publish a notice of his determination not to take emergency action.

(d) The emergency action provided under subsection (c) shall cease to apply—

(1) upon the [proclamation of import relief under section 202(a)(1)] *provision of import relief under chapter 1 of title II* of the Trade Act of 1974;

(2) on the day the [President makes a determination under section 203(b)(2)] *United States Trade Representative makes a decision under section 204(a)* of such Act not to impose import relief;

(3) in the event of a report of the Commission containing a negative finding, on the day the Commission's report is submitted to the [President] *United States Trade Representative,* or

(4) whenever the [President] *United States Trade Representative* determines that because of changed circumstances such relief is no longer warranted.

TARIFF ACT OF 1930

TITLE III—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

* * * * * * *

SEC. 303. COUNTERVAILING DUTIES.

(a) LEVY OF COUNTERVAILING DUTIES.—(1) * * *

* * * * * * *

(3) The provisions of this section apply with respect to any nonmarket economy country (as defined in section 406(e) of the Trade Act of 1974) to the extent that the administering authority (as defined in section 777(1)) can reasonably identify, and determine the amount of, a grant or bounty provided by that country.

(4)(A) The administering authority shall notify the Commission whenever the international obligations of the United States, as determined by the United States Trade Representative, require a determination of injury to the domestic industry with respect to merchandise covered by a countervailing duty order issued under this section for which there was no determination of injury by the Commission. Within 180 days after the date of such notice (hereinafter in this paragraph referred to as the "injury requirement notice", the Commission shall make a determination of whether—

(i) an industry in the United States—

(I) would be materially injured, or

(II) would be threatened with material injury,

or

(ii) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the duty-free merchandise subject to the outstanding countervailing duty order if the outstanding order were revoked. This determination shall have the same force and effect as a final determination under section 705(b) and shall be communicated to the administering authority and published by the Commission in the Federal Register.

(B) Pending receipt of the Commission's determination under subparagraph (A), the liquidation of all entries covered by the order and which are entered or withdrawn from warehouse for consumption on or after the date of the injury requirement notice shall be suspended, and the outstanding order, including any requirement for cash deposits, shall remain in effect. Pending receipt of the Commission's determination under subparagraph (A), the administering

authority shall also suspend, as of the date of the injury requirement notice, the conduct of any administrative review of the outstanding order under section 751 which covers, in whole or in part, merchandise entered or withdrawn from warehouse for consumption on or after such date.

(C)(i) Upon being notified of an affirmative determination under subparagraph (A) by the Commission, the administering authority shall, as appropriate, liquidate entries of merchandise the liquidation of which was suspended under subparagraph (B) in accordance with section 751 and continue suspension of liquidation and the collection of estimated duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c).

(ii) Upon being notified of a negative determination under subparagraph (A) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice of the revocation in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation under subparagraph (B). Revocation of the order shall only apply with respect to entries of merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date of the injury requirement notice.

(5) If, during the pendency of an investigation under this section, the administering authority notifies the Commission that the international obligations of the United States require a determination of injury under subsection (a)(2) with respect to such imports, then—

(A) if the administering authority has not yet made a preliminary determination under this section, the Commission shall commence an investigation of injury as if it had been informed by the administering authority at the time specified in section 702(d) that a countervailing duty investigation was being instituted and the administering authority may extend the time for its preliminary determination to an appropriate period not to exceed 45 days, but in no event shall such a determination be made before an affirmative determination by the commission under section 703(a); and

(B) if the administering authority has made a preliminary determination under this section, but not a final determination, as to whether a grant or bounty is being paid or bestowed, the Commission shall thereafter commence an investigation as if the preliminary determination by the administering authority was made on the effective date of the injury requirement. The administering authority may extend the time for its final determination an appropriate period not to exceed 120 days. The Commission shall make its preliminary determination under this paragraph not later than 45 days after the date on which it receives notification from the administering authority that the international obligations of the United States require an injury determination and its final determination under this paragraph not later than 120 days after being so informed by the administering authority, but in no event shall the Commission's final determination be made before the final determination by the administering authority under section 303 of the Act. Pending receipt of the Commission's final determination

under this paragraph, any suspension of liquidation of entries and collection of determination of estimated duties ordered by the preliminary determination of the administering authority under this section, shall remain in effect.

(b) The duty imposed under subsection (a) shall be imposed, under regulations prescribed by the administering authority [(as defined in section 771(1))], in accordance with title VII of this Act (relating to the imposition of countervailing duties) except that, in the case of any imported article or merchandise which is not free of duty—

(1) no determination by the United States International Trade Commission under section 703(a), 704, or 705(b) shall be required,

* * * * * * *

(d) EFFECT OF DIVIDED VOTE IN CERTAIN CASED.—

(1) In a proceeding in which the Commission is required to determine—

(A) under section [201] *203* of the Trade Act of 1974, whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection [(b)(1)] *(a)* of that section (hereafter in this subsection referred to as serious injury), or

(B) under section 406 of such Act, whether market disruption exists,

and the commissioners voting are equally divided with respect to such determination, then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

(2) If under section [201] *203* or 406 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determination of the Commission which the [President] *United States Trade Representative* may consider an affirmative determination under paragraph (1), that serious injury or market disruption exists, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section [201(d)(1)] *203(g)* of such Act, or the finding described in section 406(a)(3) of such Act, as the case may be (hereafter in this subsection referred to as a 'remedy finding'), then—

(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of sections [202 and 203] *203 and 204* of such Act, be treated as the remedy finding of the Commission, or

(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the [President] *United States Trade Representative* reports under section [203(b)] *204(a)* of such Act that—

(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of sections [202 and 203] *203 and 204* of such Act, be treated as the remedy finding of the Commission, or

(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of sections [202 and 203] *203 and 204* of such Act, be treated as the remedy finding of the Commission.

* * * * * * *

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section [203(c)(1)] *206(a)(4)* of the Trade Act of 1974, notwithstanding section 152(a)(1)(A) of such Act, the second blank space in the joint resolution described in such section 152 (a)(1)(A) shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners ———, ———, and ———, The three blank spaces shall be filled with the names of the appropriate Commissioners.

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SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.

(a) * * *

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[(h) PENALTIES.—If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this Act, he shall, upon conviction, be fined not more than $5,000 or imprisoned not more than one year, or both.]

(h) PENALTIES.—Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this Act shall—

(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 2 years, or both.

SEC. 305. IMMORAL ARTICLES—IMPORTATION PROHIBITED.

(a) PROHIBITION OF IMPORTATION.—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided,* That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision; *Provided further,* That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

(b) *ENFORCEMENT PROCEDURES.*—Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officer to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Court of International Trade from the decision of such customs officer. **[**Upon the seizure of such book or matter such customs officer shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized.**]**

Upon the seizure of such book or matter, such customs officer shall transmit information thereof to the United States attorney of the district in which is situated either—

(1) the office at which such seizure took place; or

(2) the place to which such book or matter is addressed;

and the United States attorney shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized.

Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

(c) Notwithstanding the provisions of subsections (a) and (b), whenever a customs officer discovers any obscene material after such material has been imported or brought into the United States, or attempted to be imported or brought into the United States, he may refer the matter to the United States attorney for the institution of forfeiture proceedings under this section. Such proceedings shall begin no more than 30 days after the time the material is seized; except that no seizure or forfeiture shall be invalidated for delay if the claimant is responsible for extending the action beyond

the allowable time limits or if proceedings are postponed pending the consideration of constitutional issues.

(d) Upon motion of the United States, a court shall stay such civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter.

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PART II—UNITED STATES TARIFF COMMISSION

SEC. 330. ORGANIZATION OF THE COMMISSION.

(a) * * *

* * * * * * *

(f) The Commission shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44, United States Code.

* * * * * * *

SEC. 332. INVESTIGATIONS.

(a) * * *

* * * * * * *

(g) Reports to President and Congress.—The commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress**[**, and shall report to Congress**]**. *However, the Commission may not release information which the Commission considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. The Commission shall report to Congress* on the first Monday of December of each year hereafter a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and a list of all votes taken by the commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each such annual report shall include a list of all complaints filed under section 337 during the year for which such report is being made, the date on which each such complaint was filed, and the action taken thereon, and the status of all investigations conducted by the commission under such section during such year and the date on which each such investigation was commenced.

(h) Annual Reports on Sectoral Competitiveness.—(1) The Commission shall conduct studies, on an annual basis, regarding—

(A) the conditions of competition within the United States and within global markets with respect to key sectors of the United States economy;

(B) the implications of such conditions of competition for the national economic security; and

(C) the extent to which recent actions by the United States under the trade laws have affected the competitiveness of the sectors.

(2) The purpose of the studies required under paragraph (1) is to provide to Congress and to appropriate officials of the United States Government useful analyses and information to assist in anticipating sectoral trade problems within the national economy and in formulating policies to avoid or remedy such problems.

(3) In deciding which sectors of the national economy to study, the Commission shall—

(A) consult with the Committees referred to in subsection (g) and with the United States Trade Representative; and

(B) take in account—

(i) the extent to which the sector involves a critical technology;

(ii) the extent to which the sector contributes to the industrial base of an economy;

(iii) the extent to which the sector contributes to the health or condition of other sectors;

(iv) the role of the sector in the domestic economy generally; and

(v) the potential role of the sector in global markets over the next decade.

(4) The Commission shall submit reports containing the results of the studies conducted under this subsection to the Congress and to the United States Trade Representative as soon as practicable after the close of the year to which the studies pertain.

(i) MONITORING OF IMPORTS.—The Commission shall, beginning on the date of the enactment of this section, monitor imports into the United States for the purposes of identifying, ranking, and providing analysis with respect to, those classes or kinds of imported merchandise that may pose potential significant problems from import competition for United States industries, based on such factors as changes in net trade balances of the articles concerned and evidence of increasing import penetration of the domestic market. The Commission shall submit to the Committees referred to in subsection (g) a quarterly report regarding the monitoring required under this subsection.

* * * * * * *

SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

[(a) UNFAIR METHODS OF COMPETITION DECLARED UNLAWFUL.—Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section.]

(a)(1) Subject to paragraph (2), the following are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) Unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), and (D)) into the United States, or in the sale of such articles by the owner, importer, consignee, or agent of either, the threat or effect of which is—

(i) to destroy or substantially injure an industry in the United States;

(ii) to prevent the establishment of such as industry; or

(iii) to restrain or monopolize trade and commerce in the United States.

(B) The importation into the United States, or the sale by the owner, importer, consignee, or agent of either, of articles that—

(i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under title 17, United States Code; or

(ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.

(C) The importation into the United States, or the sale by the owner, importer, consignee, or agent of either, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946.

(D) The importation, or the sale by the owner, importer, consignee, or agent of either, of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.

(2) Subparagraphs (B), (C), and (D) of paragraph (1) apply only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, or mask work concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, or mask work concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

(c) DETERMINATONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section whether or not there is a violation of this section, *except that the Commission may, by issuing a consent order or on the basis of a settlement agreement, terminate any such investigation, in whole or in part, without making such a determination.* Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e) **[**or (f)**]** *(f), or (g),* may appeal such determination within, 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5, United States Code. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), [and (f)] *(f), and (g)* with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code.

* * * * * * *

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—*(1)* If, during the course of an investigation under this section, the Commission determines that there is a reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from the entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

(2) A complainant may petition the Commission for the issuance of an order under this subsection. The Commission shall make a determination with regard to such petition by no later than the 90th day after the date on which the Commission's notice of investigation is publsihed in the Federal Register. The Commission may extend the 90-day period for an additional 60 days in a case it designates as a more complicated case. The Commission shall publish in the Federal Register its reasons why it designated the case as being more complicated. The Commission may require the petitioner to post a bond as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent. The Commission shall by rule prescribe the terms and conditions under which bonds may be forfeited to respondents under this paragraph.

(3) The Commission may grant preliminary relief under this subsection or subsection (f) with respect to a violation involving a registered trademark, copyright, or mask work or a patent, to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.

(f) CEASE AND DESIST ORDERS.—(1) [In lieu of] *In addition to, or in lieu of, taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an* *order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be.*

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $10,000 or *twice* the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g)(1) If—

(A) a complaint is filed against a person under this section;

(B) the complaint and a notice of investigation are served on the person;

(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

(D) the person fails to show good cause why the person should not be found in default; and

(E) the person seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

(2) A general exclusion from entry of the articles concerned, regardless of the source or importer of the article, may be issued if—

(A) no person appeared to contest an investigation concerning a violation of the provisions of this section, and

(B) such a violation is established by substantial, reliable, and probative evidence.

(h) The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.

[(g)**]** *(i)* REFERRAL TO THE **[**PRESIDENT.**]** *UNITED STATES TRADE REPRESENTATIVE.*—(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the [President] *United States Trade Representative* a copy of such determination and the action taken under subsection (d), (e), [or] (f), *or (g),* with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the [President] *United States Trade Representative,* for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), [or (f)] *(f), or (g)* with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), [or (f)] *(f), or (g)* with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.

(4) If the [President] *United States Trade Representative* does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) such determination shall become final on the day after the close of such period or the day on which the [President] *United States Trade Representative* notifies the Commission of his approval, as the case may be.

[(b)] *(j)* PERIOD OF EFFECTIVENESS.—*(1)* Except as provided in subsections (f) and [(g),] *(i),* any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), or (g)—

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition—

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

[(i)] *(k)* IMPORTATIONS BY OR FOR THE UNITED STATES.—Any exclusion from entry or order under subsection (d), (e), [or] (f), *or (g),* in cases based on [claims of United States letters patent] *proceeding under subsection (a)(1)(B), (C), or (D),* shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, [a patent owner] *an owner of the patent, copyright, trademark, or mask work* adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Claims Court pursuant to the procedures of section 1498 of title 28, United States Code.

[(j)] *(l)* DEFINITION OF UNITED STATES.—For purposes of this section and sections 338 and 340, the term "United States" means the customs territory of the United States as defined in general headnote 2 of the Tariff Schedules of the United States.

(m)(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is designated as confidential by the person submitting it may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to—

(A) an officer or employee of the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted,

(B) an officer or employee of the United States Government who is directly involved in review under subsection (h), or

(C) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under this section resulting from the investigation in connection with which the information is submitted.

* * * * * * *

SEC. 339. TRADE REMEDY ASSISTANCE OFFICE.

(a) There is established in the Commission [a Trade] *(b) a separate office to be known as the Trade* Remedy Assistance Office which shall provide full information to the public [,upon request,] *upon request and shall, to the extent feasible, provide assistance and advice to interest parties* concerning—

(1) remedies and benefits available under the trade laws, and

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits

[(b) Each agency responsible for administering a trade law shall provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications (other than those which, in the opinion of the agency, are frivolous) to obtain the remedies and benefits that may be available under that law.]

(b) The Trade Remedy Assistance Office, in coordination with each agency responsible for administering a trade law, shall provide technical and legal assistance and advice to eligible small businesses to enable them—

(1) to prepare and file petitions and applications (other than those which, in the opinion of the Office, are frivolous); and

(2) to seek to obtain the remedies and benefits available under the trade laws, including any administrative review or administrative appeal thereunder.

* * * * * * *

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

* * * * * * *

Sec. 514. Finality of Decisions; Protests.—

(a) Finality of Decisions.—Except as provided in subsection (b) of this section, section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by domestic interested parties [as defined in section 771(9)(C), (D), (E), and (F) of this Act], section 520 (relating to refunds and errors), and section 521 (relating to reliquidations on account of fraud) of this Act, decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;

* * * * * * *

SEC. 516. PETITIONS BY DOMESTIC INTERESTED PARTIES.

(a) Request for Classification and Rate of Duty; Petition.—(1) * * *

* * * * * * *

(3) Any producer of a raw agricultural product who is considered under section 771(4)(E) to be part of the industry producing a processed agricultural product of the same class or kind as the designated imported merchandise shall, for purposes of this section, be treated as an interested party producing such processed agricultural product.

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PART V—ENFORCEMENT PROVISIONS

* * * * * * *

SEC. 623. BONDS AND OTHER SECURITY.

(a) * * *

* * * * * * *

(c) The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. *In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establising standards for setting the terms and conditions for cancellation of bonds or charges thereunder.*

* * * * * * *

TITLE VII

* * * * * * *

TITLE VII-COUNTERVAILING AND ANTIDUMPING DUTIES

* * * * * * *

Subtitle D-General Provisions

Sec. 771. Definitions; special rules.

* * * * * * *

Sec. 779. [Drawbacks.] *Drawback treatment.*
Sec. 780. Application of title to governmental importations.
Sec. 781. Downstream product monitoring.

Subtitle A—Imposition of Countervailing Duties

SEC. 701. COUNTERVAILING DUTIES IMPOSED.

(a) * * *

* * * * * * *

(c) Treatment of Non-Market Economy Countries.—The provisions of this subtitle apply with respect to any non-market economy country (as defined in section 406(e) of the Trade Act of 1974) to the extent that the administering authority can reasonably identify, and determine the amount of, a subsidy provided by that country.

[c] *(d)* Upstream Subsidy.—Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A(a)(1), is being paid or bestowed, the administering authority shall investigate whether and upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 771A(a)(3).

[d] *(e)* Cross Reference.—For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.

SEC. 702. PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.

(a) * * *

(b) Initiation by Petition.—

(1) Petition Requirements.—A countervailing duty proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), (E), [or (F)] *(F), or (G)* of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

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SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) * * *

* * * * * * *

(g) Investigation To Be Continued Upon Request.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

SEC. 705. FINAL DETERMINATIONS.

(a) * * *

* * * * * * *

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register. *If there is any significant deviation from established administrative precedent in the determination of the administering authority, the notification required of the administrative authority under the preceding sentence shall contain an explanation of the deviation.*

(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

Subtitle B—Imposition of Antidumping Duties

* * * * * * *

SEC. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

(a) * * *

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—An antidumping proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), (E), [or (F)] *(F), or (G)* of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is ac-

companied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

* * * * * * *

(e) INVESTIGATION OF DIVERSIONARY INPUT DUMPING.—The administering authority shall investigate whether diversionary input dumping is occurring whenever—

(1) the administering authority has reasonable grounds to believe or suspect that diversionary input dumping is occurring;

(2) a material or component described in clause (ii) of section 771(18)(A) is routinely used as a major material or component in manufacturing or producing the merchandise under investigation such that it has a significant effect on the cost of manufacturing the merchandise; and

(3) official government statistics or other reliable, generally accepted trade statistics indicate that subsequent to the issuance of an antidumping duty order under section 736 or the entry into force of an international agreement or arrangement relating to the importation into the United States of the material or component, the following changes have occurred, as measured by quantity or market share—

(A) shipments to the United States of the material or component have decreased absolutely or the rate of increase of such shipments has decreased, and

(B) shipments to the United States of the merchandise under investigation have increased.

SEC. 733. PRELIMINARY DETERMINATIONS.

(a) * * *

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.

(1) * * *

* * * * * * *

(3) DIVERSIONARY INPUT DUMPING.—If, before making a preliminary determination under paragraph (1) or (2), the administering authority determines that there is reason to believe or suspect that diversionary input dumping is occurring, the period of time within which a preliminary determination must be made under paragraph (1) or (2) shall be extended to 190 days (240 days in cases declared extraordinarily complicated under subsection (c)) after the date on which the petition is filed under sectijon 732(b) or the date on which the investigation is initiated under section 732(a).

* * * * * * *

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION

(a) * * *

* * * * * * *

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or

(2) an interested party described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) may, by petition file with the Commission and with notice to the administering authority, ask for a review of the suspension.

SEC. 735. FINAL DETERMINATIONS.

(a) FINAL DETERMINATIONS BY ADMINISTERING AUTHORITY.—

(1) * * *

* * * * * * *

(4) DIVERSIONARY INPUT DUMPING.—If, after making a preliminary determination under section 733(b), the administering authority determines that there is reason to believe or suspect that diversionary input dumping is occurring, the period of time within which a final determination must be made under paragraph (1) shall be extended to 105 days (165 days if paragraph (2) applies) after the date on which the preliminary determination was made under section 733(b).

* * * * * * *

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register. *If there is any significant deviation from established administrative precedent in the determination of the administering authority, the notification required of the administrative authority under the preceding sentence shall contain an explanation of the deviation.*

(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

* * * * * * *

Subtitle C—Reviews; Other Actions Regarding Agreements

CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.

(a) * * *

* * * * * * *

(f) DEVIATION FROM ADMINISTRATIVE PRECEDENT.—If there is any significant deviation from established administrative precedent in any determination made by the administrative authority under this section, the notice required to be published under this section with respect to the determination shall contain an explanation of the deviation.

(g) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

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Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) * * *

* * * * * * *

(4) INDUSTRY.—

(A) * * *

(E) INDUSTRY PRODUCING PROCESSED AGRICULTURAL PRODUCTS.—

(i) IN GENERAL.—In an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—

(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(ii) PROCESSING.—For the purpose of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if—

(I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) RELEVANT ECONOMIC FACTORS.—For purposes of clause (i)(II), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall—

(I) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) RAW AGRICULTURAL PRODUCT.—For purposes of this subparagraph, the term "raw agricultural product" means any farm or fishery product.

[(5) SUBSIDY.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303 of this Act, and includes, but is not limited to, the following:

[(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

[(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

[(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

[(ii) The provision of goods or services at preferential rates.

[(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

[(iv) The assumption of any costs or expenses of manufacture, production, or distribution.]

(5) SUBSIDY. —

(A) IN GENERAL.—The term 'subsidy' has the same meaning as the term 'bounty or grant' as that term is used in section 303 of this Act, and includes, but is not limited to, the following:

(i) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(ii) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(I) The provision of capital, loans or loan guarantees on terms inconsistent with commercial considerations.

(II) The provision of goods or services at preferential rates.

(III) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(IV) The assumption of any costs or expenses of manufacture, production, and distribution.

(B) SPECIAL RULE.—In applying subparagraph (A), the administering authority, in each investigation, shall determine whether the benefits under the bounty, grant, or subsidy are actually paid to or bestowed on a specific enterprise or industry, or group of enteprises or industries. A nominal general availability, under the terms of the law or rule establishing a bounty, grant, or subsidy, of the benefits thereunder is not cause for determining that the bounty, grant, or subsidy cannot be, or has not been, paid to or bestowed on a specific enterprise or industry, or group thereof.

(C) DETERMINATION OF PREFERENTIAL RATES.—For purposes of determining under subparagraph (A)(ii)(II) whether the rate at which goods or services are provided is preferential, the administering authority shall compare such rate with the following:

(i) The freely-available and market-determined rate at which such or similar goods or services are provided within the country.

(ii) If a rate cannot be determined under clause (i), an appropriate rate applicable to external transactions regarding such or similar goods or services, including, but not limited to—

(I) rate (if different from the rate subject to investigation) at which the government provides such or similar goods or services for export;

(II) the world market rate if any, for such or similar services; or

(III) the freely available and market-determined rate at which such or similar goods or services are provided within another country that has a market for the goods or service that is similar to the market of the country subject to the investigation.

(iii) If a rate cannot be determined under clause (ii), a rate determined by the administering authority, on the basis of the best information available to it, that reflects—

(I) the cost of producing the goods or providing the services and

(II) a reasonable profit for such production or provision,

* * * * * * *

(7) MATERIALS INJURY.—

(A) * * *

[(B) VOLUME AND CONSEQUENT IMPACT.—In making its determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission shall consider, among other factors—

[(i) the volume of imports of the merchandise which is the subject of the investigation,

[(ii) the effect of imports of that merchandise on prices in the United States for like products, and

[(iii) the impact of imports of such merchandise on domestic producers of like products.]

(B) VOLUME AND CONSEQUENT IMPACT.—In making its determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission, in each case—

(i) shall consider—

(I) the volume of imports of the merchandise which is the subject of the investigation,

(II) the effect of imports of that merchandise on prices in the United States for like products, and

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 705(d) or 735(d), as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) EVALUATION OF [VOLUME AND OF PRICE EFFECTS.] *RELEVANT FACTORS*.—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price [undercutting] *underselling* by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

[(iii) IMPACT ON AFFECTED INDUSTRY.—In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—]

(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(iii), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices, and

(III) actual and potential negative effect on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

The Commission shall evaluate all relevant economic factors within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

[(iv) CUMULATION.—For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market.]

(iv) CUMULATION.—For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and price effects of imports from two or more countries if such imports compete with each other, and with like products of the domestic industry, in the United States market, and if such imports—

(I) are subject to any investigation under section 303, 701, or 731;

(II) are subject to any final order or suspension agreement resulting from an investigation under section 303, 701, or 731; or

(III) were entered before any quantitative restraint was imposed, if such restraint was the basis on which a petition filed under section 303, 701, or 731 was withdrawn after the administering authority made an affirmative preliminary determination on the petition.

Subclauses (II) and (III) apply only if the order, agreement, or restraint concerned came into effect within the 12-month period ending on the date the investigation *with respect to which this clause is being applied is initiated.*

(v) EXCLUSION OF NEGLIGIBLE IMPORTS FROM CUMULATION.—The Commission is not required to apply clause (iv) or subparagraph (F)(iii) in any case in which the Commission determines that imports of the merchandise subject to investigation are negligible and have no discernable adverse impact on the domestic industry. For purposes of making such a determination, the Commission shall evaluate all relevant economic factors regarding the imports, but not limited to, whether—

(I) the volume and market share of the imports are negligible;

(II) sales transactions involving the imports are isolated and sporadic; and

(III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

* * * * * * *

[(E) SPECIAL RULES.—For purposes of this paragraph—

[(i) NATURE OF SUBSIDY.—In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

[(ii) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.]

(E) SPECIAL RULES.—For purposes of this paragraph—

(i) STANDARD OF DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(ii) GEOGRAPHICALLY ISOLATED MARKETS.—In determining whether material injury, the threat of material injury, or the material retardation of the establishment of an industry exists, the Commission may consider whether imports of the merchandise which is the subject of the investigation have historically supplied a substantial proportion of demand in a geographically isolated market, and, in appropriate circumstances, may disregard imports the merchandise into such a geographcially isolated market in making its determi-

nation. A geographically isolated market is one in which—

(I) producers located within such market have not supplied demand in that market to any substantial degree in the most recent representative period, and there is no resonable likelihood that they will do so in the future;

(II) producers have made no significant effort as measured by capital investment in plant and equipment, or in distribution and marketing, within a reasonably recent period, to meet demand in that market, and there is no reasonable likelihood that they will do so in the future; and

(III) producers located outside the area have historically not met demand within the region at prices reasonably equivalent to prices prevailing elsewhere in the United States because of transportation, insurance, or other costs which would be incurred to ship the product to or market the product in the geographically isolated market.

(F) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors—

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) *provided by a foreign country and effects likely to be caused by the subsidy,*

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, **[**and**]**

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation**[**.**]***,*

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the extent to which the United States is a focal point for exports of the merchandise by reason of restraints on exports of the merchandise to, or on imports of the merchandise into, third country markets.

* * * * * * *

(iii) CUMULATION.—To the extent practicable and subject to paragraph (C)(v), for purposes of clause (i)(III) and (IV), the Commission shall cumulatively assess the volume and price effects of imports from two or more countries if such imports—

(I) compete with each other, and with like products of the domestic industry, in the United States market; and

(II) are subject to any investigation under section 303, 701, or 731.

(iv) EFFECT OF DUMPING IN THIRD-COUNTRY MARKETS.—In investigations under subtitle B, the Commission shall consider whether dumping in third country markets, as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation, suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer, exporter, or United States importer concerning this issue. If the foreign manufacturer, exporter, or United States importer does not provide specific and convincing information to establish that there is no threat of injury to the United States industry, then the Commission may draw adverse inferences. For purposes of this clause, the term "GATT member market" means any country which is a signatory to The Agree-

ment on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures), and the European community shall be treated as being one country.

* * * * * * *

(9) INTERESTED PARTY.—The term "interested party" means.

(A) * * *

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States, **[**and**]**

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a like product **[**.**]**, *and*

(G) in any investigation under this title involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either—

(i) processors, or

(ii) processors and producers or growers.

* * * * * * *

(18) PREVENTION OF CIRCUMVENTION OF FINDINGS AND ORDERS.—

(A) DEFINITION.—As used in this paragraph, the term "order or finding" means—

(i) a countervailing duty order issued under section 303 or 706;

(ii) an antidumping duty order issued under section 736; or

(iii) a finding issued under the Antidumping Act, 1921.

(B) DUMPING OR SUBSIDIZATION OF MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES.—If a product which is within the class or kind of merchandise covered by an order or finding is completed or assembled in the United States with parts or components imported from the country covered by such order or finding, the order or finding shall apply to those parts or components used in the completion or assembly of the merchandise in the United States, if—

(i) substantially all the parts and components are imported from the country covered by the order or finding;

(ii) the value added in the United States is small in relation to the total value of the merchandise entered into the commerce of the United States; and

(iii) the parts or components were produced or exported by a company related to the company performing the completion or assembly in the United States.

(C) DUMPING OR SUBSIDIZATION OF MERCHANDISE COMPLETED OR ASSEMBLED IN THIRD COUNTRIES.—If the administering authority decides such action to be appropriate to prevent significant evasion of an order or finding, the ad-

ministering authority may include in the order or finding merchandise of the class or kind covered by the order or finding that is completed or assembled in a third country before importation into the United States if—

(i) substantially all the parts and components are imported from a country covered by the order or finding;

(ii) the value added in the third country is small in relation to the total value of the merchandise imported into the United States; and

(iii) the parts or components were produced or exported by a company related to the company performing the completion or assembly in the third country.

(D) MINOR ALTERATIONS OF MERCHANDISE.—The class or kind of merchandise subject to an order or finding shall presumptively include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), and whether or not include in the same tariff classification after such alteration, if such alteration does not result in a change in the class or kind of the merchandise, and unless the administering authority determines that it would be unnecessary to consider the altered merchandise.

(19) DIVERSIONARY INPUT DUMPING.—Diversionary input dumping occurs when any material or component—

(A) which is incorporated into the merchandise under investigation; and

(B) with respect to which, either—

(i) during the 6-year period occurring before the date on which the investigation referred to in subparagraph (A) was commenced—

(I) an antidumping duty order was issued under section 736;

(II) an investigation was suspended under section 734; or

(III) a review occurred under section 751; or

(ii) an agreement, arrangement, or understanding containing quantitative limitations, restrictions, or other terms relating to the importation into the United States of such material or component on which an investigation termination under section 734 was based was entered into or undertaken after a preliminary affirmative determination was made during the 6-year period referred to in clause (i) by the United States and a country;

is purchased by the manufacturer or producer of such merchandise at a price that is less than the input value of such material or component determined under section 773(e)(4).

SEC. 773. FOREIGN MARKET VALUE.

(a) DETERMINATION; FICTITIOUS MARKET; SALES AGENCIES.—For purposes of this title—

(1) * * *

* * * * * * *

(5) Diversionary input dumping.—Notwithstanding paragraph (1), if the administering authority determines that diversionary input dumping is occurring with respect to the merchandise under investigation, the foreign market value of such merchandise shall be the constructed value of such merchandise determined under subsection (e).

* * * * * * *

(e) Constructed Value.—

(1) * * *

* * * * * * *

(4) Diversionary input dumping.—

(A) In general.—If the administering authority determines that diversionary input dumping is occurring, the constructed value of the merchandise subject to investigation that is otherwise calculated under this subsection shall be increased by an amount equal to the excess of—

(i) the input value of the material or component determined under subparagraph (B), over

(ii) the price at which the manufacturer or producer of the merchandise under investigation purchased the material or component.

(B) Determination of input value of materials and components.—

(i) In general.—For purposes of this paragraph, and subject to clause (ii), the input value of any material or component involved in diversionary input dumping is the value of the material or component determined by the administering authority on the basis of—

(I) if section 771(19)(B)(i) applies to the material or component, the foreign market value determined under the appropriate proceeding referred to in such section; or

(II) if section 771(19)(B)(ii) applies to the material or component, the foreign market value calculated for purposes of the preliminary affirmative determination concerned or a value determined on the basis of reliable information presented by parties during the investigation or otherwise available to the Commission.

(ii) Adjustment.—If the administering authority has reason to believe that the value determined under clause (i) does not accurately reflect the competitive benefit that the material or component gives to the manufacturer or producer of the merchandise subject to investigation, the administering authority may appropriately adjust that value to reflect the value of that benefit.

SEC. 776. VERIFICATION OF INFORMATION.

(a) Certification of Submissions.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the peti-

tioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

[(a) GENERAL RULE.—] *(b) VERIFICATION.*—The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,

[(b)] *(c)* DETERMINATIONS TO BE MADE ON BEST INFORMATION AVAILABLE.—In making their determinations under this title, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required or otherwise significantly impedes an investigation, use the best information otherwise available.

SEC. 777. ACCESS TO INFORMATION.

(a) * * *

(b) PROPRIETARY INFORMATION.—

(1) CONFIDENTIALITY MAINTAINED.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title) without the consent of the person submitting it. The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

(A) * * *

(B) either—

(i) * * *

[(ii) a statement that the information should not be released under administrative protective order.]

(ii) a statement to the administering authority that the business proprietary information is of a type that should not be released under administrative protective order, or a statement to the Commission that information should not be released under administrative protective order.

* * * * * * *

(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER. —

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

[(A) IN GENERAL.—Upon receipt of an application, (before or after receipt of the information requested) which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make proprietary information submitted by any other party to the investigation available under a protective order described in subparagraph (B).]

(A) In general.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission may make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and information of a type which the administering authority or the Commission determines should not be released under administrative protective order) available under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding.

* * * * * * *

(C) Time limitation.—The administering authority shall determine whether to make information available under this paragraph not later than 14 days (or 21 days if the statements described in subsection (b)(1)(B)(ii) are submitted with such information) after the date on which an application for disclosure is submitted under subparagraph (A); except that the administering authority may extend the 15-day or 21-day limitation, as the case may be, by not more than 10 additional days if the information is unusually voluminous or complex. If the determination is affirmative, business proprietary information already submitted to the administering authority shall be made available, subject to the terms and conditions of the protective order, on the date such determination occurs. Business proprietary information submitted to the administering authority after such determination shall be served as required by subsection (d).

(D) Failure to disclose.—If a person submitting information refuses to disclose business proprietray information which the administering authority determines should be released under protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting it and shall not consider them.

(E) Diversionary input dumping proceedings.—In investigations of diversionary input dumping, the administering authority may release under administrative protective order, in accordance with this subsection, any information designated as business proprietary information by the person submitting it, whether or not submitted in the same proceeding, except that information submitted before the effective date of section 771(19) shall not be released under administrative protective order without the consent of the party without submitting it.

(d) Service.—Any party submitting business proprietary information to the administering authority during a proceeding shall, at the same time, serve the information upon all other parties to the proceeding , if the information is covered by a protective order. The administering authority shall not accept any such information that is not accompanied by a certificate of service and a copy of the pro-

tective order version of the document containing the information. Business proprietary information shall only be served upon parties that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other parties.

(e) Timely Submissions.—Information shall be submitted to the administering authority during the course of a proceeding on a timely basis and shall be subject to comment by other parties within such reasonable time as the administering authority shall provide. If information is submitted without an adequate opportunity for other parties to comment thereon, the administering authority shall return the information to the party submitting it and shall not consider it.

SEC. 779. [DRAWBACKS.] *DRAWBACK TREATMENT.*

* * * * * * *

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this title [shall be treated as any other] *shall not be treated as being regular* customs duties.

SEC. 780. APPLICATION OF TITLE TO GOVERNMENTAL IMPORTATIONS.

Merchandise imported by, or for the use of, an agency of the United States Government is not exempt from the provisions of this title.

SEC. 781. DOWNSTREAM PRODUCT MONITORING.

(a) Definitions.—As used in this section—

(1) The term "component part" means an imported article that—

(A) during the 5-year period before the date on which a petition is filed under subsection (b) has been subject to—

(i) an order issued under this title imposing a countervailing duty or antidumping duty of 15 percent ad valorem or higher, or

(ii) an agreement entered into under section 704 or 734 after a preliminary affirmative determination under section 703(b) or 733(b)(1) was made involving an estimated net subsidy or net dumping margin of 15 percent ad valorem or higher; and

(B) because of its inherent characteristics is routinely used as a major part, component, assembly, subassembly, or material in other manufactured articles.

(2) The term "downstream product" means any imported manufactured article into which is incorporated any component part.

(b) Petition Requesting Monitoring.—

(1) In general.—A domestic producer of an article that is like a component part or a downstream product may petition the administering authority to designate a downstream product for monitoring under subsection (c). The petition shall specify—

(A) the downstream product;

(B) the component product incorporated into such downstream product; and

(C) reasons for suspecting the likely diversion, as a result of the imposition of antidumping or countervailing duties,

of exports of the component part to the United States into increased production and exportation to the United States of such downstream product.

(2) ACTION ON PETITIONS.—Within 14 days after receiving a petition, the administering authority shall determine whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to component parts. In making such a determination, the administering authority may, if appropriate, take into account such factors as—

(A) the value of the component part in relation to the value of the downstream product;

(B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and

(C) the relationship between the producers of component parts and producers of downstream products.

(3) PUBLICATION OF DETERMINATION.—The administering authority shall publish notice of each determination under paragraph (2) in the Federal Register.

(4) DETERMINATIONS NOT SUBJECT TO JUDICIAL REVIEW.—A determination by the administering authority under paragraph (2) is not subject to judicial review.

(c) ITC Monitoring.—

(1) NOTICE TO ITC.—The administering authority shall immediately inform the Commission of an affirmative determination under subsection (b)(2) regarding a downstream product.

(2) MONITORING.—The Commission shall immediately commence the monitoring of the volume of trade in downstream products regarding which notice is received under paragraph (1). If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in that product sector.

(3) REPORTS.—The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses undertaken under paragraph (2). The Commission shall make the reports available to the public.

(d) ACTION ON BASIS OF MONITORING REPORTS.—The administering authority shall review the information in the reports prepared by the Commission under subsection (c) and—

(1) consider the information in determining whether to initiate an investigation under section 702(a) or 732(a) regarding any downstream product; and

(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

SECTION 801 OF THE ACT OF SEPTEMBER 8, 1916

An Act To increase the revenue, and for other purposes.

SEC. 801. [That it shall be unlawful for] *(a) For purposes of this section, an "unfair competitive act" exists if* any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically [to import, sell or cause] *imports, sells or causes* to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported, after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States: *Provided,* That such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States.

[Any person who violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding $5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.]

[Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, this section,] *(b) Any person that is injured in his business or property by reason of the commission of, or the combination or conspiracy to commit, an unfair competitive act* may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

[The foregoing provisions shall not be construed to deprive the proper State courts of jurisdiction in actions for damages thereunder.]

(c) For the purposes of this section:

(1) The provisions of subsections (a) and (b) may not be construed to deprive the proper State courts of jurisdiction in actions for damages under the section.

(2) The term "actual market value" means foreign market value as determined under section 773 of the Tariff Act of 1930.

(3) If—

(A) the person against whom a suit is brought under subsection (b) is, or has been, a multiple offender within the meaning of subsection (a)(6) of section 165 of the Trade and International Economic Policy Act of 1987 with respect to a product monitoring category established under that section; and

(B) the articles involved in the alleged unfair competitive act under the suit are included within the same product monitoring category (A);

then there is a rebuttable presumption that an act committed by the foreign manufacturer under subsection (a) was committed with intent of destroying or injuring an industry in the United States. With respect to any suit brought under this section in which such a rebuttable presumption applies, subsection (b) is amended by striking out "threefold".

TRADE EXPANSION ACT OF 1962

* * * * * * *

TITLE II—TRADE AGREEMENTS

* * * * * * *

CHAPTER 4—NATIONAL SECURITY

* * * * * * *

SEC. 232. SAFEGUARDING NATIONAL SECURITY.

(a) * * *

(b)*(1)* Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of the Treasury (hereinafter referred to as the "Secretary") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall consult with, the Secretary of Defense, the Secretary of Commerce, and other appropriate officers of the United States, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion.

The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within **[**one year**]** *270 days* after receiving an application from an interested party or otherwise beginning an investigation under this subsection. **[**If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.**]**

(2) If the Secretary finds under paragraph (1) that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall advise the President of that finding in the report required under paragraph (1). Within 90 days after receiving the report, the President shall—

(A) determine whether he concurs with the advice of the Secretary;

(B) if he concurs, determine the nature and duration of the action that, in his judgment, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security; and

(C) report in writing to the Congress the reasons for the determination under subparagraph (A), or under both subparagraphs (A) and (B), as the case may be.

(3) If the President determines under paragraph (2)(B) to take action to adjust imports of an article and its derivatives, the President shall implement that action no later than the 15th day after the day on which he determines to take action under paragraph (2)(B).

CHAPTER 5—ADMINISTRATIVE PROVISIONS

* * * * * * *

SEC. 242. INTERAGENCY TRADE ORGANIZATION.

[(a) The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this title and sections 201, 202, and 203 of the Trade Act of 1974. Such organization shall, in addition to the Special Representative for Trade Negotiations, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.**]**

(a)(1) The President shall establish an interagency organization.

(2) The functions of the organization are—

(A) to assist, and make recommendations to, the President in carrying out the functions vested in him by the trade laws and to advise the Trade Representative in carrying out the functions set forth in section 141 of the Trade Act of 1974;

(B) to assist the President, and advise the Trade Representative, with respect to the development and implementation of the international trade policy objectives of the United States; and

(C) to advise the President and the Trade Representative with respect to the relationship between the international trade policy objectives of the United States and other major policy areas which may significantly affect the overall international trade policy and trade competitiveness of the United States.

(3) The interagency organization shall be composed of the following:

(A) The Trade Representative, who shall be chairperson.
(B) The Secretary of Commerce.
(C) The Secretary of State.
(D) The Secretary of the Treasury.
(E) The Secretary of Agriculture.
(F) The Secretary of Labor.

The Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject *matters of specific functional interest to such agencies are under consideration. It shall meet at such times and with respect to such matters as the President or the Chairman shall direct.*

(b) In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

* * * * * * *

In carrying out its functions under this subsection, the organization shall take into account the advice of the congressional and private sector advisory groups, as well as that of any committee or other body established to advise the department, agency, or office which a member of the Council heads.

* * * * * * *

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

* * * * * * *

SEC. 212. BENEFICIARY COUNTRY.

(a) * * *

* * * * * * *

[(e) The President shall, after complying with the requirements of subsection (a)(2), withdraw or suspend the designation of any country as a beneficiary country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b).]

(e) The President may, after complying with the requirements of subsection (a)(2)—

(1) withdraw or suspend the designation of any country as a beneficiary country; or

(2) withdraw, suspend, or limit the application of duty free treatment under this subtitle to any article of any country;

if, after such designation, he determines that as a result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b).

SEC. 213. ELIGIBLE ARTICLES.

(a)(1) * * *

(e)(1) The [President may by proclamation] *United States Trade Representative* suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is [proclaimed pursuant to section 203] *provided under chapter 1 of title II* of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(2) In any report by the International Trade Commission to the [President under section 201(d)(1)] *United States Trade Representative under section 204* of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of subsections [(a) and (c) of section 203] *chapter 1 of title II* of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No [proclamation] *import relief* which provides soley for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be [made under subsection (a) and (c) of section 203] *provided under chapter 1 of title II* of the Trade Act of 1974 unless the Untied States International Trade Commission, in addition to making an affirmative determination with respect to such article under section [20(b)] *203* of the Trade Act of 1974, determines in the course of its investigation under section [201(b)] *203* of such Act that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title.

(5)(A) Any [proclamation issued pursuant to section 203] *import relief provided under chapter 1 of title II* of the Trade Act of 1974 that is in effect when duty-free treatment pursuant to section 101 of this title is proclaimed shall remain in effect until modified or terminated.

(B) If any article is subject to import relief at the time duty-free treatment is proclaimed pursuant to section 211, the President may reduce or terminate the application of such import relief to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of [subsection (h) and (i) of section 203] *section 205,* of the Trade Act of 1974.

(f)(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within fourteen days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the [President] *United States Trade Representative* and recommend that the [President] *United States Trade Representative* take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within seven days after the [President] *United States Trade Representative* receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the

duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the [proclamation] *provision* of import relief pursuant to section [202(a)(1) *204* of the Trade Act of 1974,

(B) on the day the [President makes a determination pursuant to section 203(b)(2)] *United States Trade Representative makes a determination under section 204(a)(1)(B)* of such Act not to impose import relief,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants provided for in subpart A of part 6 of schedule 1 of the TSUS;

(B) fresh or chilled vegetables provided for in items 135.10 through 138.46 of the TSUS;

(C) fresh mushrooms provided for in item 144.10 of the TSUS;

(D) fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS;

(E) fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(F) concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(g) No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

* * * * * * *

Act of July 2, 1940

[To limit the importation of products made, produced, processed, or mined under process covered by unexpired valid United States patents, and for other purposes.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the importation hereafter for use, sale, or exchange of a product made, produced, processed, or mined under or by means of a process covered by the claims of any unexpired valid United States letters patent, whether issued heretofore or hereafter, shall have the same status for the purposes of section 337 of the Tariff Act of 1930 as the importation of any product or article covered by the claims of any unexpired valid United States letters patent.]

Section 2 of the International Coffee Agreement Act of 1980

IMPORTATION OF COFFEE UNDER INTERNATIONAL COFFEE AGREEMENT 1976; PRESIDENTIAL POWERS AND DUTIES

SEC. 2. On and after the entry into force of the International Coffee Agreement, 1983, and before October 1, [1986] *1989,* the President is authorized, in order to carry out and enforce the provisions of that agreement—

(1) to regulate the entry of coffee for consumption, or withdrawal of coffee from warehouse for consumption, or any other form of entry or withdrawal of coffee such as for transportation or exportation, including whenever quotas are in effect pursuant to the agreement, (A) the limitation of entry, or withdrawal from warehouse, of coffee imported from countries which are not members of the International Coffee Organization, and (B) the prohibition of entry of any shipment from any member of the International Coffee Organization of coffee which is not accompanied either by a valid certificate of origin, a valid certificate of reexport, a valid certificate of reshipment, or a valid certificate of transit, issued by a qualified agency in such form as required under the agreement;

* * * * * * *

Section 805 of the Steel Import Stabilization Act

SEC. 805. ENFORCEMENT AUTHORITY.

(a) * * *

* * * * * * *

(c)(1) Any steel product that is manufactured in a country that is not party to a bilateral arrangement from steel which was melted and poured in a country that is party to a bilateral arrangement (hereinafter in this subsection referred to as an 'arrangement country') may be treated for purposes of the quantitative restrictions under that arrangement as if it were a product of the arrangement country.

(2) The Secretary of Commerce, after consultation with the United States Trade Representative, may direct the Secretary of the Treasury to implement such procedures as may be necessary or appropriate to carry out the purpose of paragraph (1).

[(c)] *(d)* For purposes of carrying out this title, the Secretary of the Treasury may provide by regulation for the terms and conditions under which steel products may be denied entry into the United States.

TARIFF SCHEDULES OF THE UNITED STATES

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SCHEDULE 1—ANIMAL AND VEGETABLE PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty		
		1	Special	2
	PART 3.—FISH AND SHELLFISH			
*	*	*	*	*
	Subpart C.—Fish in Airtight Containers			
*	*	*	*	*
	Fish, prepared or preserved in any manner, in oil, in airtight containers:			
[112.40	Anchovies	6% ad val.[1]	Free (A.E,I)	30% ad val.]
	Anchovies:			
112.39	*For an aggregate quantity entered in any calendar year not to exceed 3,000 metric tons.*	*3% ad val.*		*30% ad val.*
112.41	*Other*	*6% ad val.*		*30% ad val.*
*	*	*	*	*
	PART 4.—DAIRY PRODUCTS; BIRDS' EGGS			
*	*	*	*	*
	Subpart C.—Cheese			
*	*	*	*	*
	Other cheeses, and substitutes for cheese:			
	Cheese made from sheep's milk:			
117.65	In original loaves and suitable for grating.	[9% ad val] *Free*	Free (A,E,I)	35% ad val.
117.67	Pecorino, in original loaves, not suitable for grating.	[12% ad val.] *Free*	Free (A,E,I)	35% ad val.
*	*	*	*	*
	PART 9.—EDIBLE NUTS AND FRUITS			
*	*	*	*	*
	Subpart B.—Edible Fruits			
*	*	*	*	*
	Oranges:			
[147.29	Mandarin, packed in airtight containers	0.2¢ per lb	Free (A,E,I)	1¢ per lb.]
	Mandarin, packed in airtight containers:			
147.28	*Satsuma, for an aggregate quantity entered in any calendar year not to exceed 40,000 metric tons.*	*Free*		*1¢ per lb.*
147.29	*Other*	*0.2¢ per lb*		*1¢ per lb.*
*	*	*	*	*
	Olives, fresh, or prepared or preserved:			
148.20	Fresh	*5¢ per lb*	Free (E, I)	5¢ per lb.
	In brine, whether or not pitted or stuffed:			
	Not ripe and not pitted or stuffed:			
148.42	Not green in color and not packed in airtight containers of glass, metal, or glass and metal.	*15¢ per gal*	Free (E)	20¢ per gal.
148.43	*Green in color and in containers each holding 3 gallons or more, to be used for repacking or sale as green olives, for a quantity entered in any calendar year not to exceed 4,400 metric tons.*	*10¢ per gal*		*20¢ per gal.*
[148.44] *148.45*	Other	20¢ per gal	Free (E)	20¢ per gal.
	In containers each holding not more than 0.3 gallon.			
	In containers each holding more than 0.3 gallon.			
	Ripe, but not pitted or stuffed:			

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of Duty		
		1	Special	2
148.46	Not green in color and not packed in airtight containers of glass, metal, or glass and metal.	15¢ per gal.	Free (E)	30¢ per gal.
148.47	*Green in color and in containers each holding not more than 5 gallons, for a quantity entered in any calendar year not to exceed 730 metric tons.*	*15¢ per gal*		*30¢ per gal.*
[*148.49*]	Other	30¢ per gal.	Free (E)	30¢ per gal.
148.50	Pitted [or stuffed]	30¢ per gal.	Free (E)	30¢ per gal.
	Stuffed:			
148.51	*Placed packed in containers each holding not more than 0.3 gallon, for a quantity entered in any calendar year not to exceed 2,700 metric tons.*	*15¢ per gal*		*30¢ per gal.*
148.53	*Other*	*30¢ per gal*		*30¢ per gal.*
[148.52]	Dried:			
148.55	Not ripe	5¢ per lb.	Free (A,E,I)	[5¢] *2.5¢ per* lb.
[148.54] *148.57*	Ripe	2.5¢ per lb.	Free (E,I)	5¢ per lb.
[148.56	Otherwise prepared or preserved	5¢ per lb.	Free (E)	5¢ per lb.]
	Otherwise prepared or preserved:			
148.58	*Green in color and in containers each holding not more than 5 gallons, for a quantity entered in any calendar year not to exceed 550 metric tons.*	*2.5¢ per lb*		*5¢ per lb.*
148.59	*Other*	*5¢ per lb*		*5¢ per lb.*
*	* * *	*	*	*
	PART 11.—COFFEE, TEA, MATE, AND SPICES			
*	* * *	*	*	*
	Subpart B.—Spices and Spice Seeds			
*	* * *	*	*	*
161.06	Capers: In immediate containers holding more than 7.5 pounds.	[16% ad val]. *8% ad val.*[1]	Free (A,E) 5.1% ad val. (I)[1].	20% ad val.
161.08	Other	[16% ad val]. *8% ad val.*[1]	Free (E) 5.1% ad val. (I)[1].	20% ad val.
*	* * *	*	*	*
161.71	Paprika, ground or not ground	[2¢] *1.35¢* per lb.[1].	Free (A,E,I)	5¢ per lb.
*	* * *	*	*	*
	PART 12.—BEVERAGES			
*	* * *	*	*	*
	Subpart C.—Fermented Alcoholic Beverages			
*	* * *	*	*	*
167.15	Cider, fermented, whether still or sparkling	[3¢] *1.5¢* per gal.[2]	Free (A,E,I)[2]	5¢ per gal.[2]
*	* * *	*	*	*
	PART 14—ANIMAL AND VEGETABLE OILS, FATS, AND GREASES			
*	* * *	*	*	*
	Subpart B.—Vegetable Oils, Crude or Refined			
*	* * *	*	*	*
	Other:			

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of Duty		
		1	Special	2
176.29	Weighing with the immediate container under 40 pounds.	[3.8¢ per lb. on contents and container] *2.28¢ per lb. on contents and container.*	Free (A,E,I)	8¢ per lb. on contents and container.
176.30	Other	[2.6¢] *1.56¢* per lb.	Free (A,E,I)	6.5¢ per lb.

* * * * * * *

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS

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Item	Articles	Rates of Duty		
		1	Special	2

PART 4.—DAIRY PRODUCTS; BIRDS' EGGS

* * * * * * *

Subpart D.—Other Milk Products

* * * * * * *

Item	Articles	1	Special	2
[118.45	Milk protein concentrate	0.2¢ per lb.	Free (A,E,I)	5.5¢ per lb.]
	Casein caseinates, and milk protein concentrate:			
118.50	*Casein*	*Free*		*Free*
118.55	*Dried milk (described in items 115.45, 115.50, 115.55, and 118.05) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported.*	*1.3¢ per lb*		*5.5 per lb.*
118.60	*Other*	*0.2¢ per lb*		*5.5¢ per lb.*

* * * * * * *

PART 5.—HIDES, SKINS, AND LEATHER; FURSKINS:

* * * * * * *

Subpart B.—Furkins

Subpart B headnotes:

1. * * *

* * * * * * *

[4. The entry, or withdrawal from warehouse, for consumption of ermine, fox, kolinsky, marten, mink, muskrat, and weasel furskins, raw or not dressed, or dressed, which are the product of the Union of Soviet Socialist Republics is prohibited.]

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PART 9.—EDIBLE NUTS AND FRUITS

* * * * * * *

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of Duty		
		1	Special	2
	Subpart B.—Edible Fruits			
	* * * *	*	*	*
	Plums, prunes, and prunelles, fresh, or prepared or preserved:			
	Fresh:			
	* * * *	*	*	*
149.26	[Dried] *Dried, salted, or not salted but not otherwise further prepared.*	2¢ per lb.	Free (E,I)	2¢ per lb.
[149.28	Otherwise prepared or preserved	17.5% ad val	Free (E) 14% ad val. (I)	35% ad val.]
	In airtight containers			
	Not in airtight containers			
	Otherwise prepared or preserved:			
149.30	*Plums, soaked in brine and dried*	*2¢ per lb*		*2¢ per lb.*
149.31	*Other*	*17.5% ad val*		*35% ad val.*
	* * * *	*	*	*
	PART 12.—BEVERAGES			
	* * * *	*	*	*
	Subpart A.—Fruit Juices			
	* * * *	*	*	*
	Fruit juices, including mixed fruit juices, concentrated or not concentrated, whether or not sweetened:			
	Not mixed and not containing over 1.0 percent of ethyl alcohol by volume:			
165.15	Apple or pear	Free [1]		5¢ per gal. [1]
	Citrus fruit:			
165.25	Lime	10¢ per gal [1]	Free (E) [1] 8¢ per gal. (I). [1]	70¢ per gal. [1]
	Not concentrated			
	Concentrated			
	Orange:			
165.27	Not concentrated and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree).	20¢ per gal [1]	Free (E) [1]	70¢ per gal. [1]
165.29	Other	35¢ per gal [1]	Free (E) [1]	70¢ per gal. [1]
	Grapefruit:			
165.31	*Not concentrated and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree).*	*20¢ per gal*		*70¢ per gal.*
165.34	*Other*	*35¢ per gal*		*70¢ per gal.*
[165.32] *165.37*	Not concentrated	20¢ per gal [1]	Free (E) [1]	70¢ per gal. [1]
[165.36] *165.38*	Concentrated	35¢ per gal [1]	Free (E) [1]	70¢ per gal. [1]
	Lemon			
	~~Other~~ —			
	* * * *	*	*	*
	PART 15.—OTHER ANIMAL AND VEGETABLE PRODUCTS			
	* * * *	*	*	*
	Subpart D.—Feathers, Downs, Bristles, and Hair			
	* * * *	*	*	*
186.20	Fur, not on the skin, prepared for hatters[use, and carroted furskins] *use.*	[15% ad val. *Free*	Free (A,E) 12% ad val. (I)	35% ad val.
186.22	*Carroted furskins*	*15% ad val.*		*35% ad val.*
	* * * *	*	*	*

SCHEDULE 2.—WOOD AND PAPER: PRINTED MATTER

* * * * * * *

Item	Articles	Rates of Duty		
		1	Special	2

PART 3.—WOOD VENEERS, PLYWOOD AND OTHER WOOD-VENEER ASSEMBLIES, AND BUILDING BOARDS

Part 3 headnotes:

1. For the purposes of this part, the following terms have the meanings hereby assigned to them:
   (a) * * *
   (b) *Plywood*: Rigid wood-veneer assemblies bonded together with adhesive substances having a central ply or core of wood veneer or lumber with one or more plies of wood veneer on each side thereof, the grain of at least one ply being at an angle (usually a right angle) with the grain of one or more of the other plies, including such assemblies the face ply (or plies) of which has been mechanically scored, striated, or similarly processed *or any edge of which has been tongued, grooved, lapped, or otherwise worked*;
   (c) *Wood-veneer panels*: Rigid wood-veneer assemblies, bonded together with adhesive substances, except plywood, with a wood-veneer ply on one side of a backing, or on both sides of a core, which backing or core may be composed of lumber, veneer, hardboard, wood particle board, or other material, including such assemblies the face ply (or plies) of which has been mechanically scored, striated, or similarly processed *or any edge of which has been tongued, grooved, lapped, or otherwise worked*;

* * * * * * *

   (e) *Building boards*: Panels of rigid construction, including tiles and insulation board, *other than plywood, wood-veneer panels, or cellular panels*, chiefly used in the construction of walls, ceilings, or other parts of buildings.

* * * * * * *

PART 5.—BOOKS, PAMPHLETS, AND OTHER PRINTED AND MANUSCRIPT MATERIAL

* * * * * * *

Item	Articles	1	Special	2
	Printed catalogs relating chiefly to current offers for the sale of United States products:			
[270.45] *270.46*	Wholly or almost wholly of foreign authorship.	0.2% ad val.	Free (A,D,E,I)	15% ad val.
[270.50] *270.48*	Other	0.4% ad val.	Free (A,D,E,I)	25% ad val.

* * * * * * *

Item	Articles	1	Special	2
270.90	*Catalogs of films, recordings, or other visual and auditory material of an educational, scientific, or cultural character.*	Free		Free

* * * * * * *

Item	Articles	1	Special	2
	[Architectural, engineering, industrial, or commercial drawings and plans, whether originals or reproductions printed on sensitized materials by any photographic process:			
[273.45	Produced over 20 years before importations	Free		Free
[273.50	Produced not over 20 years before importation:			
	Suitable as designs for use in the manufacture of floor coverings, textiles, wall coverings, or wall paper.	1.4% ad val	Free (A,E,I)	20% ad val.
[273.55	Other	0.5% ad val	Free (A,D,E,I)	25% ad val.]

SCHEDULE 2.—WOOD AND PAPER: PRINTED MATTER—Continued

Item	Articles	Rates of Duty		
		1	Special	2
273.52	*Architectural, engineering, industries, or commercial drawings and plans, whether originals or reproductions.*	*Free*		*Free*
*	*	*	*	*
	Photographs *(including developed photographic film; photrographic slides; transparencies; holograms for laser projection; and microfilm, microfiches and similar articles except those provided for in item 737.52)*, engravings, etchings, lithographs, and wood cuts, and pictorial matter produced by relief or stencil printing process, all the foregoing, whether bound or not bound, and not specially provided for:			
274.50	Printed over 20 years at time of importation	Free		Free
	Printed not over 20 years at time of importation:			
274.55	*Loose illustrations, reproductions proofs or reproduction films used for the production of books.*	*Free*		*Free*
274.56	*Articles provided for in items 270.05, 270.10, 270.25, 270.55, 270.63 270.70, and 273.00 in the form of microfilm, microfiches, and similar film media.*	*Free*		*free*
	Lithographs on paper:			
274.60	Not over 0.020 inch in thickness	6¢ per lb.	Free (A,E,I.)	30¢ per lb.
	Posters			
	Other			
274.65	Over 0.020 inch in thickness	Free		8.75¢ per lb. + 25% ad val.
274.70	Other	3.2% ad val.	3.1% ad val. (D) [1]. Free (A,E,I)	
	Posters			
	Other			
*	*	*	*	*

SCHEDULE 3.—TEXTILE FIBERS AND TEXTILE PRODUCTS

Item	Articles	Rates of Duty		
		1	Special	2
*	*	*	*	*

Schedule 3 headnotes:

1. * * *

* * * * * * *

5. (a) Except as otherwise provided in subsection (b) of this headnote, for the purposes of parts 5, 6, and 7 of this schedule and parts 1 **[**(except subpart A)**]**, *(except subparts A and C)* 4, and 12 of schedule 7, in determining the classification of any article which is wholly or in part of a fabric coated or filled, or laminated, with nontransparent rubber or plastic (which fabric is provided for in part 4C of this schedule), the fabric shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that (as used in the article) the nontransparent rubber or plastics forms either the outer surface of such article or the only exposed surface of such fabric.

(b) Any fabric described in part 4C of this schedule shall be classified under part 4C whether or not also described elsewhere in the schedules.

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PART 3.—WOVEN FABRICS

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SCHEDULE 3.—TEXTILE FIBERS AND TEXTILE PRODUCTS—Continued

Item	Articles	Rates of Duty		
		1	Special	2
	Subpart E.—Woven Fabrics of Man-Made Fibers			
*	* * *	*	*	*
[338.50	Other	2¢ per lb. + 17.9% ad val.	1.4¢ per lb. + 12.5% ad val. (I).	81% ad val.
	Suitable for making typewriter and machine ribbon, containing yarns the average denier of which exceeds 25 but not 75, the total thread count (treating multiple (folded) or cabled yarns as single threads) of which per inch is not less than 150 warp and 100 filling and not more than 210 warp and 140 filling and in which the thread count of the warp does not exceed 60 percent of the total thread count on the warp and filling:			
	Slit, with fast edges (614)			
	Other (614)			
	Other, wholly of continuous fibers (including continuous man-made filaments or strips):			
	Woven fabrics obtained from high tenacity yarn of nylon, polyester, or viscose rayon:			
	Of nylon or polyester (612)			
	Of viscose rayon (610)			
	Woven fabrics obtained from non-cellulosic man-made fiber strips (612).			
	Other, weighing not over 5 oz. per square yard:			
	Containing 85 percent or more by weight of rayon or acetate:			
	Flat fabrics, not textured (610)			
	Other (610)			
	Containing 85 percent or more by weight of nylon:			
	Flat fabrics, not textured (612)			
	Other (612)			
	Containing 85 percent or more by weight of polyester:			
	Flat fabrics, not textured:			
	Unbleached or bleached (612)			
	Other (612)			
	Flat fabrics, textured:			
	Unbleached or bleached (612)			
	Other (612)			
	Other, not textured:			
	Unbleached or bleached (612)			
	Dyed (612)			
	Of yarns of different colors (612).			
	Printed (612)			
	Other, not textured:			
	Unbleached or bleached (612)			
	Dyed (612)			
	Of yarns of different colors (612).			
	Printed (612)			
	Other (612)			
	Other, weighing over 5 oz. per square yard:			
	Containing 85 percent or more by weight of rayon or acetate (610).			
	Containing 85 percent or more by weight of nylon:			
	Flat fabrics, not textured (612)			
	Other (612)			
	Containing 85 percent or more by weight of polyester:			
	Flat fabrics, not textured:			
	Unbleached or bleached (612)			
	Other (612)			
	Flat fabrics, textured:			
	Unbleached or bleached (612)			
	Dyed (612)			
	Of yarns of different colors (612).			
	Printed (612)			
	Other, not textured:			
	Unbleached or bleached (612)			

Item	Articles	Rates of Duty		
		1	Special	2
	Other (612)			
	Other, not textured:			
	Unbleached or bleached (612)			
	Other (612)			
	Other (612)			
	Other, combinations and mixtures of filament and spun yarns, weighing not more than 5 ounces per square yard, of polyester (except fabrics of polyester, mixed mainly or solely with cotton or mixed mainly or solely with rayon), measuring less than 30 inches in width or less than 36 inches between selvages, with over 120 warp yarns per inch, of a kind for use in the manufacture of neckties (614).			
	Other, weighing not more than 5 oz. square yard:			
	Cheesecloth:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Poplin or broadcloth:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613).			
	Other (613)			
	Other (613)			
	Other (614)			
	Printcloth:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613).			
	Other (613)			
	Other, containing 85 percent or more by weight of noncellulosic man-made fibers (613).			
	Other (613)			
	Other (614)			
	Sheeting:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613).			
	Other (613)			
	Other (613)			
	Other (614)			
	Batistes, lawns, or voiles:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613).			
	Other (613)			
	Other (613)			
	Other (614)			
	Sateens or twills:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Twills (613)			
	Sateen (613)			
	Other (614)			
	Oxford cloth:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			

SCHEDULE 3.—TEXTILE FIBERS AND TEXTILE PRODUCTS—Continued

Item	Articles	Rates of Duty		
		1	Special	2
	Other:			
	Of yarns of different colors (613).			
	Other (613)			
	Other (614)			
	Other:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Other, weighing more than 5 oz. per square yard:			
	Duck:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Poplin or broadcloth:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Of man-made fibers, mixed mainly or solely with cotton (613).			
	Other (613)			
	Other (614)			
	Sheeting:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613).			
	Other (613)			
	Other (613)			
	Other (614)			
	3-thread or 4-thread twill (including broken twill), warp faced, of yarns, of different colors, the filling yarns of which are not of different colors:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Other twill (including across twill):			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613).			
	Other (613)			
	Other (613)			
	Other (614)			
	Sateens:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Other:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)]			
338.60	*Containing 85% more by weight of continuous man-made fibers.*	*2¢ per lb. + 17.9% ad val.*		*81% ad val.*
	Other:			
338.70	*Weighing not more than 5 oz. per square yard*	*2¢ per lb. + 17.9% ad val.*		*81% ad val.*
338.80	*Other*	*2¢ per lb. + 17.9% ad val.*		*81% ad val.*

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SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty		
		1	Special	2
	PART 2.—CHEMICAL ELEMENTS, INORGANIC AND ORGANIC COMPOUNDS, AND MIXTURES			
	* * * * * * *			
	Subpart C.—Inorganic Chemical Compounds			
	* * * * * * *			
422.50	Uranium compounds: Oxide	Free		Free
	Hexafluoride (UF_6):			
422.51	*If imported for use in reactors in the United States and a product of a country that requires that uranium mined in that country be converted or upgraded into uranium hexafluoride (UF_6)* before export.	*$3 per lb*		*$3 per lb.*
422.53	*Other*	*Free*		*Free*
[422.52]	Other	Free		Free
422.54	Fluorides			
	Other			

* * * * * * *

PART 4.—SYNTHETIC RESINS AND PLASTICS MATERIALS; RUBBER

Subpart A.—Synthetic Resins and Plastics Materials

Subpart A headnotes:

1. This subject does not cover synthetic plastics materials [provided for in part 1C], *other than silicones, provided for in part 1* of this schedule, but the addition of any product described in part 1 of this schedule to a synthetic plastics material described in this subpart as an antioxidant, color, dispersing agent, emulsifier, extender, filler, pesticide, plasticizer, or stabilizer does not affect the classification of such synthetic plastics material in this subpart.

[2. The term *"synthetic plastics materials"*, in this subpart, embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which an antioxidant, color, dispersing agent, emulsifier, extender, filler, pesticide, plasticizer, or stabilizer may have been added. These products contain as an essential ingredient an organic substance of high molecular weight; are capable, at some stage during processing into finished articles, of being molded or shaped by flow; and are solid in the finished article. The term includes, but is not limited to, such products derived from esters of acrylic or methacrylic acid; vinyl acetate, vinyl chloride resins, polyvinyl alcohol, acetals, butyral, formal resins, polyvinyl ether and ester resins, and polyvinylidene chloride resins; urea and amino resins; polyethylene, polypropylene, and other polyalkene resins; siloxanes, silicones, and other organo-silicon resins; alkyd, acrylonitrile, allyl, and formaldehyde resins, and cellulosic plastics materials. These synthetic plastics materials may be in solid, semi-solid, or liquid condition such as flakes, powders, pellets, granules, solutions, emulsions, and other basic crude forms not further processed.]

2. (a) The term "synthetic plastics materials" in this subpart—

(i) embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which an antioxidant, color, dispersing agent, emulsifier, extender, filler, pesticide, plasticizer, or stabilizer may have been added; and

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

(ii) includes silicones (including fluids, resins, elastomers, and copolymers) whether or not such materials are solid in the finished articles.

(b) The products referred to in (a) contain as an essential ingredient an organic substance of high molecular weight; and, except as provided in (a)(ii) of this headnote, are capable, at some stage during processing into finished articles, of being molded or shaped by flow and are solid in the finished article. The term includes, but is not limited to, such products derived from esters of acrylic or methacrylic acid; vinyl acetate, vinyl chloride resins, polyvinyl alcohol, acetals, butyral, formal resins, polyvinyl ether and ester resins, and polyvinylidene chloride resins; urea and amino resins; polyethylene, polypropylene, and other polyalkene resins; siloxanes, silicones, and other organo-silicon resins; alkyd, acrylonitrile, allyl, and formaldehyde resins, and cellulosic plastics materials. These synthetic plastics materials may be in solid, semi-solid, or liquid condition such as flakes, powders, pellets, granules, solutions, emulsions, and other basic crude forms not further processed.

* * * * * * *

Item	Articles	Rates of Duty: 1	Special	2
445.54	Polytetrafluoroethylene (PTFE) resins	0.7¢ per lb. + 6.2% ad val.	0.7¢ per lb. + 5.7% ad val.(D). Free (A,E,I)	33.5% ad val
445.55	*Silicone resins and materials*	*3.7% ad val.*		*25% ad val.*
[445.56] *445.60*	Other	1¢ per lb. + 8% ad val.	1¢ per lb. + 7.7% ad val.(D). Free (A,E,I)	33.5% ad val.
	Thermoplastic resins:			
	Polyacetal			
	Polyamide, non-nylon type			
	Polyterpene			
	Other			
	Thermosetting resins:			
	Dicyandiamide (cyanoguanidine) resins.			
	Furan (furfuryl type) resins			
	Silicone resins			
	Other			

* * * * * * *

Subpart B.—Rubber

Subpart B headnotes:

1. * * *

2. (a) For the purposes of the tariff schedules, the term "*rubber*" means a substance, whether natural or synthetic, in bale, crumb, powder, latex, or other crude form, that—

(i) can be vulcanized or otherwise cross-linked, and

(ii) after cross-linking can be stretched at 68°F. to at least three times its original length and that, after having been stretched to twice its original length and the stress removed, returns within 5 minutes to less than 150 percent of its original length.

(b) For purposes of the Tariff Schedules other than schedule 4, the term "*rubber*" also means any substance described in subdivision (a) that also contains fillers, extenders, pigments, or rubber-processing chemicals, whether or not such substance, after the addition of such fillers, extenders, pigments, or chemicals, can meet the tests specified in clauses (i) and (ii) of subdivision (a).

(c) For the purpose of the tariff schedules, the term "rubber" does not include silicones.

* * * * * * *

PART 10.—PETROLEUM, NATURAL GAS, AND PRODUCTS DERIVED THEREFROM [1]

Part 10 headnotes:

1. Any product described in this part and also in part 1 of this schedule is classifiable to said part 1, except *motor fuel blending stocks,* fuel oils, motor fuel, and lubricating oils and greases, containing by weight not over 25 percent of any product described in said part 1. This part does not cover—
   - (i) paraffin and other petroleum waxes (see part 13B of this schedule), or
   - (ii) petroleum asphalts (see part 1J of schedule 5).
2. For the purposes of this part—
   - (a) *"Reconstituted crude petroleum"* (items 475.05 and 475.10) is a product which is essentially the equivalent of crude petroleum and which is made by adding fuel oil, naphtha, or other petroleum fractions to crude or topped crude petroleum; [and]
   - (b) *"Motor fuel"* (item 475.25) is any product derived primarily from petroleum, shale, or natural gas, whether or not containing additives, which is chiefly used as a fuel in internal-combustion or other engines[.]*; and*
   - *(c) "Motor fuel blending stock" (item 475.27) means any product (except naphthas provided for in item 475.35) derived primarily from petroleum, shale oil, or natural gas, whether or not containing additives, to be used for direct blending in the manufacture of motor fuel.*

* * * * * * *

Item	Articles	Rates of Duty 1	Special	2
475.27	*Motor fuel blending stocks*	*1.25¢ per gal.*		*2.5¢ per gal.*
475.30	Kerosene derived from petroleum, shale oil, or both (except motor [fuel] *fuel or motor fuel blending stocks).*	0.25¢ per gal.	Free (I)	0.5¢ per gal.

* * * * * * *

PART 13.—FATTY SUBSTANCES, CAMPHOR, CHARS AND CARBONS, ISOTOPES, WAXES, AND OTHER PRODUCTS

* * * * * * *

Subpart B.—Camphor, Chars and Carbons, Isotopes, Waxes, and Other Products

* * * * * * *

Item	Articles	Rates of Duty 1	Special	2
	[Casein and mixtures in chief value thereof (other than a product described in item 118.45):			
[493.12	Casein	Free		Free
	[Other:			
[493.14	Dried milk (described in items 115.45, 115.50, 115.55, and 118.05) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported [1].	1.3¢ per lb.	Free (A,E,I)	5.5¢ per lb.
[493.17	Other	0.2¢ per lb.	Free (A,E,I)	5.5¢ per lb.]

* * * * * * *

SCHEDULE 6.—METALS AND METAL PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty		
		1	Special	2

PART 2.—METALS, THEIR ALLOYS, AND THEIR BASIC SHAPES AND FORMS

* * * * * * *

Subpart B.—Iron Steel

Subpart B headnotes:

1. * * *

* * * * * * *

3. *Forms and Condition of Iron or Steel.*—For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

(a) *Ingots:* Castings resulting from the solidification of molten steel and having a columnar form suitable for working by rolling or forging.

(b) *Blooms and billets:* Semifinished products generally of rectangular or circular cross section, having a length several times greater than the maximum cross-sectional dimension, and, if rectangular, a width less than 4 times the thickness. A bloom is at least 36 square inches in cross-sectional area; a billit is less than 36 square inches but not less than 3 square inches in cross-sectional area.

(c) *Slabs and sheet bars:* Semifinished products of rectangular cross section, having a width of at least 4 times the thickness. A slab is not less than 2 inches [and not over 6 inches] in thickness; a sheet bar is less than 2 inches in thickness.

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PART 4.—MACHINERY AND MECHANICAL EQUIPMENT

* * * * * * *

Subpart E.—Textile Machines; Laundry and Dry-Cleaning Machines; Sewing Machines

Subpart E headnote:

1. For purposes of applying item 670.74 to parts of articles provided for under items *912.03 or* 912.04, any such part that is entered, or withdrawn from warehouse for consumption, during the effective period of item *912.03 or* 912.04 shall be dutiable at the rate that would apply if that item had not been enacted.

* * * * * * *

PART 5.—ELECTRICAL MACHINERY AND EQUIPMENT

Part 5 headnotes:

1. * * *

* * * * * * *

3. The provisions of this headnote apply to *"television apparatus and parts thereof"* provided for in items 684.92 through 685.08 inclusive, of this part.

(a) The term *"complete"*, as used to describe *television receivers*, means a television receiver, fully assembled *in its cabinet*, whether or not packaged or tested for distribution to the ultimate purchaser.

* * * * * * *

SCHEDULE 6.—METALS AND METAL PRODUCTS—Continued

Item	Articles	Rates of Duty		
		1	Special	2

4. Picture tubes imported in combination with, or incorporated into, other articles are to be classified in items 687.35 through 687.44, inclusive, unless they are—
  - *(i) incorporated into complete television receivers, as defined in headnote 3;*
  - *(ii) incorporated into fully assembled units such as word processors, ADP terminals, or similar articles;*
  - *(iii) put up in kits containing all the parts necessary for assembly into complete television receivers, as defined in headnote 3; or*
  - *(iv) put up in kits containing all the parts necessary for assembly into fully assembled units such as word processors, ADP terminals, or similar articles.*

[4.] *5.* For the purposes of this part "*transceivers*" are combinations of radio transmitting and receiving equipment in a common housing, employing common circuit components for both transmitting and receiving, and which are not capable of simultaneously receiving and transmitting.

[5.] *6.* For the purposes of the tariff schedules hand-held Citizens Band (CB) radio transceivers are Citizens Band (CB) radio transceivers designed for operation in the hand, having a permanently affixed antenna and an internal microphone, and not designed for use with an external power source.

[6.] *7.* For purposes of the tariff schedules, the term "*entertainment broadcast band receivers*" means those radio receivers designed principally to receive signals in the AM (550–1650 kHz) and FM (88–108 mHz) entertainment broadcast bands, whether or not capable of receiving signals on other bands (e.g., aviation, television, marine, public safety, industrial, and citizens band).

* * * * * * *

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty		
		1	Special	2

PART 1.—FOOTWEAR; HEADWEAR AND HAT BRAIDS; GLOVES; LUGGAGE, HANDBAGS, BILLFOLDS, AND OTHER FLAT GOODS

* * * * * * *

Subpart C headnotes:

1. For the purposes of this subpart—
  - (a) the term "*gloves*" includes all gloves and mittens designed for human wear, except boxing gloves, golf gloves, baseball gloves, and other gloves specially designed for use in sports;
  - (b) the term "*glove linings*" includes all linings for gloves, as defined in (a) supra; and
  - (c) the term "*with fourchettes*" includes only gloves which, at a minimum, have fourchettes extending from fingertip to fingertip between each of the four fingers.
  - *(d) gloves—*
    - *(i) without fourchettes; and*
    - *(ii) constructed of a textile fabric coated, filled, impregnated, or laminated, in whole or in part, with rubber or plastics and cut-and-sewn;*

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of Duty		
		1	Special	2
	shall be regarded as gloves of textile materials.			
	* * * *	*	*	*
	PART 2.—OPTICAL GOODS; SCIENTIFIC AND PROFESSIONAL INSTRUMENTS; WATCHES, CLOCKS, AND TIMING DEVICES; PHOTOGRAPHIC GOODS; MOTION PICTURES; RECORDINGS AND RECORDING MEDIA			
	* * * *	*	*	*
	Subpart B.—Medical and Surgical Instruments and Apparatus; X-Ray Apparatus			
709.15	Electro-medical apparatus, and parts thereof:			
	Electro-surgical apparatus, *other than extracorporeal shock wave lithotripters,* and parts thereof.	7.9% ad val.	Free (A,E,I)......	55% ad val.
	Therapeutic apparatus, including surgical support apparatus.	....	....	
	* * * *	*	*	*
	Subpart E.—Watches, Clocks, and Timing Apparatus			
	Subpart E headnotes: 1. * * *			
	* * * *	*	*	*
	[4. *Special Marking Requirments:* Any movement, case, or dial provided for in this subpart, whether imported separately or attached to an article provided for in this subpart, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, or stamping, as specified below: [(a) Watch movements shall be marked on one or more of the bridges or top plates to show— [(i) the name of the country of manufacture, [(ii) the name of the manufacturer or purchaser, [(iii) in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings; and [(iv) in words, the number and classes of adjustments, or, if unadjusted, the word "unadjusted". [(b) Clock movements shall be marked on the most visible part of the front or back plate to show— [(i) the name of the country of manufacture, [(ii) the name of the manufacturer or purchaser, and [(iii) the number of jewels, if any. [(c) Watch cases shall be marked on the inside or outside of the back cover to show— [(i) the name of the country of manufacture, and [(ii) the name of the manufacturer or purchaser. [(d) Clock cases and other cases provided for in this subpart shall be marked on the most visible part of the outside of the back to show the name of the country of manufacture; and [(e) Dials shall be marked to show the name of the country of manufacture.]			

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

4. Special Marking Requirements: Any movement or case provided for in this subpart, whether imported separately or attached to any article provided for in this subpart, shall not be permitted to be entered unless legibly and indelibly marked by cutting, die-sinking, engraving, stamping, or mold-marking (either indented or raised), as specified below:

(a) Watch movements shall be marked on one or more of the bridges or top plates to show—

(i) the name of the country of manufacture;

(ii) the name of the manufacturer or purchaser; and

(iii) in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings.

(b) Clock movements shall be marked on the most visible part of the front or back plate to show—

(i) the name of the country of manufacture;

(ii) the name of the manufacturer or purchaser; and

(iii) the number of jewels, if any.

(c) Watch cases shall be marked on the inside or outside of the back case, or, at the option of the manufacturer, bezels shall be marked, to show—

(i) the name of the country of manufacture; and

(ii) the name of the manufacturer or purchaser.

If the manufacturer chooses to mark the bezels, it shall be entitled to use an alphanumeric code to designate the name of the country of manufacture and the name of the manufacturer or purchaser, so long as each such code and its referent are not duplicative of any other code and referent and are subject to inspection by the public.

(d) Clock cases provided for in this subpart shall be marked on the most visible part of the outside of the back to show the name of the country of manufacture.

* * * * * * *

PART 5.—ARMS AND AMMUNITION; FISHING TACKLE; WHEEL GOODS; SPORTING GOODS, GAMES AND TOYS

* * * * * * *

Subpart D.—Games and Sporting Goods

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
[735.20	Puzzles; game, sport, gymnastic, athletic, or playground equipment; all the foregoing, and parts thereof, not specially provided for.	5.04% ad val.[1]	Free (A*,E*,I)..	40% ad val.
	Puzzles and parts thereof....................................			
	Nets for games or sports, not specially provided for.			
	Requetball rackets....................................			
	Squash rackets....................................			
	Skateboards and parts thereof:			
	Skateboards....................................			
	Parts:			
	Decks....................................			
	Other....................................			
	Backpacking tents of textile material..............			
	Other:			
	Playground, gymnasium, gymnastic and other exercise equipment:			
	Exercise cycles....................................			
	Exercise rowing machines....................			
	Other....................................			
	Other]....................................			

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of Duty		
		1	Special	2
	Puzzles; game, sport, gymnastic, athletic, or playground equipment; all the foregoing, and parts thereof, not specially provided for:			
735.21	*Crossword puzzle books, whether or not in the form of microfilm, microfiches, or similar film media.*	*Free*		*Free*
735.24	*Other*	*5.52% ad val.*		*40% ad val.*
	Subpart E.—Models; Dolls, Toys, Tricks, Party Favors			
*	*	*	*	*
737.52	Toy books *(whether or not in the form of microfilm, microfiches, or similar film media)*, including coloring books and books the only reading matter in which consists of letters, numerals, or descriptive words.	Free		Free

* * * * * * *

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISION

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Item	Articles	Rates of Duty		
		1	Special	2
	PART 2.—PERSONAL EXEMPTIONS			
*	*	*	*	*
	Subpart D.—Other Personal Exemptions			
[825.00	Artificial limbs and limb braces imported solely for the personal use of a specified person and not for sale otherwise than for the use of such person.	Free		Free
	Articles for the blind:			
[826.10	Books, music, and pamphlets, in raised print, used exclusively by or for them.	Free		Free
[826.20	Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.	Free		Free]
*	*	*	*	*
	PART 3.—GOVERNMENTAL IMPORTATIONS			
	Subpart A.—United States Government			
*	*	*	*	*
	Articles for the use of any agency of the United States Government:			
830.00	Engravings, etchings, photographic prints, whether bound or unbound, recorded video tapes, and exposed photographic films (including motion-picture films) whether or not developed; *official government publications in the form of microfilm, microfiches, or similar film media.*	Free		Free
*	*	*	*	*
	Subpart B.—Foreign Governments and International Organizations			
*	*	*	*	*

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISION—Continued

Item	Articles	Rates of Duty		
		1	Special	2
840.00	Public documents, *whether or not in the form of microfilm, microfiches, or similar film media* (including exposed and developed motion picture and other films, recorded video tapes, and sound recordings) issued essentially at the instance and expense of a foreign government, of a political subdivision of a foreign Country, or of an international organization the membership of which includes two or more foreign countries.	Free		Free

* * * * * * *

PART 4.—IMPORTATIONS OF RELIGIOUS, EDUCATIONAL, SCIENTIFIC, AND OTHER INSTITUTIONS

Part 4 headnotes:

1. * * *

* * * * * * *

[6. (a) The term *"instruments and apparatus"* (item 851.60) embraces only instruments and apparatus provided for in—

(i) schedule 5: items 535.21-.27 and subpart E of part 2; and items 547.53 and 547.55 and subpart D of part 3;

(ii) schedule 6: subpart G of part 3; subparts A and F and items 676.15, 676.20, and 678.50 of part 4; part 5; and items 694.16, 694.50, 694.63, and 696.60 of part 6; and

(iii) schedule 7: part 2 (except subpart G); and items 790.59-.62 of subpart A of part 13;

but the term does not include materials or supplies, nor does it include ordinary equipment for use in building construction or maintenance or for use in supporting activities of the institution such as its administrative offices or its eating or religious facilities.

(b) An institution desiring to enter an article under item 851.60 shall make application therefor to the Secretary of the Treasury including therein (in addition to such other information as may be prescribed by regulation) a description of the article, the purposes for which the instrument or apparatus is intended to be used, the basis for the institution's belief that no instrument or apparatus of equivalent scientific value for such purposes is being manufactured in the United States, and a statement that either the institutions has already placed a bona fide order for the instrument or apparatus or has a firm intention, in the event of favorable action on its application, to place such an order on or before the final day specified in paragraph (d) of this headnote for the placing of an order. If the application is made in accordance with the applicable regulations, the Secretary of the Treasury shall promptly forward copies thereof to the Secretary of Commerce and to the Secretary of Health, Education, and Welfare. If, at any time while its application is under consideration by the Secretary of Commerce or by the Court of Customs and Patent Appeals on appeal from a finding by him, an institution cancels an order for the instrument or apparatus to which its application relates or ceases to have a firm intention to order such instrument or apparatus, it shall promptly so notify the Secretary of Commerce or such Court, as the case may be.]

6. (a) For purposes of item 851.60—

(i) the term "scientific instruments and apparatus" means scientific instruments and apparatus for deriving information from, or generating data necessary to, scientific experimentation by means of sensing, analyzing, measuring, classifying, recording, or similar operations; and

Item	Articles	Rates of Duty		
		1	Special	2

(ii) the term "scientific" means pertaining to the physical or life sciences and, under certain circumstances, to applied sciences. Such instruments and apparatus do not include materials or supplies, or ordinary equipment for use in building construction or maintenance or in supporting activities (such as administration or operating residential or dining facilities) of the institution seeking their entry under this item.

(b) An institution desiring to enter an article under this item shall make an application therefor to the Secretary of Commerce, including therein (in addition to such other information as may be prescribed by regulation) a description of the article, the purposes for which the instrument or apparatus is intended to be used, the basis for the institution's belief that no instrument or apparatus of equivalent scientific value for such purposes is being manufactured in the United States (as to which the applicant shall have the burden of proof), and a statement that the institution either has already placed a bona fide order for such instrument or apparatus or has a firm intention to place an order therefor on or before the final day specified in paragraph (d) of this headnote. If the Secretary finds that the application is in accordance with pertinent regulations, he shall promptly forward copies thereof to the Secretary of Health and Human Services. If, at any time while its application is under consideration by the Secretary of Commerce or on appeal from a finding by him before the United States Court of Appeals for the Federal Circuit, the institution cancels an order for the instrument or apparatus covered by its application, of if it no longer has a firm intention to order such article, it shall promptly so notify the Secretary of Commerce or the Court, as the case may be.

(c) Upon receipt of the application the Secretary of Commerce shall, by publication in the *Federal Register*, afford interested persons and other Government agencies reasonable opportunity to present their views with respect to the question whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. After considering any views presented pursuant to this paragraph, including any written advice from the Secretary of Health[, Education, and Welfare,] *and Human Services*, the Secretary of Commerce shall determine whether an instrument or apparatus of equivalent scientific value to such article, for the purposes for which the instrument or apparatus is intended to be used, is being manufactured in the United States. Each finding by the Secretary of Commerce under this paragraph shall be promptly reported to [the Secretary of the Treasury and] to the applicant institution. Each such finding shall be published in the *Federal Register*, with a statement of the reasons therefor, on or before the ninetieth day following the date on which the application was made to the Secretary of [the Treasury] *Commerce* in accordance with applicable regulations.

* * * * * * *

(e) Within 20 days after the publication in the *Federal Register* of a finding by the Secretary of Commerce under paragraph (c) of this headnote, an appeal may be taken from said finding only upon a question or questions of law and only to the United States Court of [Customs and Patent Appeals] *Appeals for the Federal Circuit*—

(i) by the institution which made the application under paragraph (b) of this headnote,

(ii) by a person who, in the proceeding which led to such finding, represented to the Secretary of Commerce in writing that he manufactures in the United States an instrument or apparatus of equivalent scientific value for the purposes for which the article to which the application relates is intended to be used,

(iii) by the importer thereof, if the article to which the application relates has been entered at the time the appeal is taken, or

(iv) by an agent of any of the foregoing.

Any appeal under this paragraph shall receive a preference over all other matters before the Court and shall be heard and determined as expeditiously as the Court considers to be practicable. The judgment of the Court shall be final.

[(f) The Secretary of the Treasury and the Secretary of Commerce may prescribe joint regulations to carry out their functions under this headnote.]

(f) The Secretary of Commerce may prescribe regulations to carry out his functions under this headnote.

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	Articles entered for the use of any nonprofit institution, whether public or private, established for educational or scientific purposes:			
851.60	[Instruments] *Scientific instrument* and apparatus, if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument or apparatus is intended to be used is being manufactured in the United States (see headnote 6 to this part).	Free		Free
*	* * *	*	*	*
851.67	*Tools specially designed to be used for the maintenance, checking, gauging or repair of scientific instruments or apparatus admitted under item 851.60.*	*Free*		*Free*

* * * * * * *

PART 7.—OTHER SPECIAL CLASSIFICATION PROVISIONS

Part 7 headnotes:

[1. No article shall be exempted from duty under item 870.30 unless a Federal agency or agencies designated by the President determines that such article is visual or auditory material of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character. Whenever the President determines that there is or may be profitmaking exhibition or use of articles described in item 870.30 which interferes significantly (or threatens to interfere significantly) with domestic production of similar articles, he may prescribe regulations imposing restrictions on the entry of such foreign articles to insure that they will be exhibited or used only for nonprofitmaking purposes.]

1. (a) No article shall be exempted from duty under item 870.30 unless either:

(i) a Federal agency or agencies designated by the President determines that such article is visual or auditory material of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, or Cultural Character (17 UST (pt. 2) 1578; Beirut Agreement), or

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISION—Continued

(ii) such article—

(A) is imported by, or certified by the importer to be for the use of, any public or private institution or association approved as educational, scientific, or cultural by a Federal agency or agencies designated by the President for the purpose of duty-free admission pursuant to the Nairobi Protocol to the Florence Agreement, and

(B) is certified by the importer to be visual or auditory material of an educational, scientific, or cultural character or to have been produced by the United Nations or any of its specialized agencies.

For purposes of subparagraph (i), whenever the President determines that there is or may be profitmaking exhibition or use of articles described in item 870.30 which interferes significantly (or threatens to interfere significantly) with domestic production of similar articles, he may prescribe regulations imposing restrictions on the entry under that item of such foreign articles to insure that they will be exhibited or used only for nonprofitmaking purposes.

(b) For purposes of items 870.32 through 870.35, inclusive, no article shall be exempted from duty unless it meets the criteria set forth in subparagraphs (a)(ii) (A) and (B) of this headnote.

* * * * * * *

3. For the purposes of items 870.65, 870.66, and 870.67—

(a) The term 'blind or other physically or mentally handicapped persons' includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(b) These item do not cover—

(i) articles for acute or transient disability;

(ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;

(iii) therapeutic and diagnostic articles; or

(iv) medicine or drugs.

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
870.30	Developed photographic film, including motion-picture film on which pictures or sound and pictures have been recorded; photographic slides; transparencies; sound recordings; recorded video-tape; models *(except toy models)*; charts; maps; globes; and posters; all of the foregoing which are determined to be visual or auditory materials in accordance with headnote 1 *(a)* of this part.	Free		Free
	Articles determined to be visual or auditory materials in accordance with headnote 1 of this part:			
870.32	*Holograms for Laser projection; microfilm, microfiches, and similar articles.*	*Free*		Free
870.33	*Motion-picture films in any form on which pictures, or sound and pictures, have been recorded, whether or not developed..*	*Free*		*Free*
870.34	*Sound recording, combination sound and visual recordings, and magnetic recordings; video discs, video tapes, and similar articles.*	*Free*		*Free*

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISION—Continued

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
870.35	*Patterns and wall charts; globs; mock-ups of visualizations of abstract concepts such as molecular structures or mathematical formulae, materials for programmed instruction; and kits continuing printed materials and audio materials and visual materials or any combination of two or more of the foregoing.*	*Free*		*Free*
*	* * *	*	*	*
	Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons:			
	Articles for the blind:			
870.63	*Books, music, and pamphlets, in raised print, used exclusively by or for them.*	*Free*		*Free*
870.66	*Braile tablets, cubarithms, and special apparatus, machines, presses, and types for their use or exclusively.*	*Free*		*Free*
870.67	*Other*	*Free*		*Free*

APPENDIX TO THE TARIFF SCHEDULES

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
	PART 1.—TEMPORARY LEGISLATION			
	Subpart B.—Temporary Provisions Amending The Tariff Schedules			
*	* * *	*	*	*
903.60	Mixtures of mashed or macerated hot red peppers and salt (provided for in item 141.77 or 141.98, part 8C, schedule 1).	Free	No change	On or before [*6/30/85* *12/31/90*]
603.65	Cantaloupes, fresh, if entered during the period from January 1 to May 15, inclusive of any year (provided for in items 148.12 and 148.17 part 9B, schedule 1).	Free	No change	On or before [*5/15/85* *12/31/90*]
*	* * *	*	*	*
	Feathers and downs, whether or not on the skin, crude, sorted (including feathers simply strung for convenience in handling or transportation), treated, or both sorted and treated, but not otherwise processed (provided for in item 186.15, part 15D, schedule 1):			
903.70	Meeting both test methods 4 and 10.1 of Federal Standard 148a promulgated by the General Services Administration.	Free	No change	On or before [12/31/ [87] *90*
903.80	Other	Free	Free	On or before [12/31/ [87] *90*
*	* * *	*	*	*
	Wool (provided for in part 1C, schedule 3):			
905.10	All wool provided for in items 306.00 through 306.24.	Free	Free	On or before [6/30/85] *12/31/90*
905.11	Wool not finer than 46s provided for in items 306.30 through 306.34.	Free	Free	On or before [6/30/85] *12/31/90*
905.25	*Yarns of silk (provided for in item 308.51, part 1D, schedule 3).*	*Free*	*No change*	*On or before 12/31/90*

APPENDIX TO THE TARIFF SCHEDULES—Continued

Item	Articles	Rates of Duty		Effective Period
		1	2	
905.30	*Grouped filaments and yarns, not textured, in continuous form, colored, of nylon or modacrylic, whether or not curled, of not less than 20 denier per filament, to be used in the manufacture of wigs for dolls (provided for in item 309.32 and 309.33, part 1E, schedule 3, or item 389.62, part 7B, schedule 3).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
905.45	*Sweaters that—* *(i) do not contain foreign materials in excess of the percentage of total value limitation contained in general headnote 3(a), and* *(ii) are assembled in Guam, exclusively by United States citizens, nationals, or resident aliens, by joining together (by completely sewing, looping, linking, or other means of attaching) at least 5 otherwise completed major knit-to-shape component parts of foreign origin,* *if entered before the aggregate quantity of sweaters described in (i) and (ii) that is entered during any 12-month period after October 31, 1985 exceeds the duty-free quantity for that period. The duty-free quantity—* *(I) for the 12-month period ending October 31, 1986 is 161,600 dozen; and* *(II) for any 12-month period thereafter is an amount equal to 101 percent of the duty-free quantity for the preceding 12-month period.*	*Free*		*On or before 10/31/92*
*	*	*	*	*
	Needle-craft display models, primarily hand stitched, of completed mass-produced kits:			
906.10	Articles provided for in items 355.16, 360.70, 360.78, 364.18, 364.23, 364.30, 365.78, 363.84, 365.86, 366.79, 367.34, 367.33, 367.60, 386.04, 386.06, 386.13, 386.30, 388.40, and 389.62 of schedule 3 (except shoe uppers and tents).	Free	No change	On or before [6/30/85] *12/31/90*
906.12	Aprons and baby bibs (provided for in items 383.03, 383.08, 383.20, and 383.50, part 6F of schedule 3).	Free	No change	On or before [6/30/85] *12/31/90*
906.26	*P-sulfobenzoic acid, potassium salt (provided for in item 404.28, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
906.34	*3-Ethylamino-p-cresol (provided for in item 404.96, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
906.36	*Mixtures of 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (Sethoxydim) and one or more organic solvents (provided for in item 407.19, part 1B, or item 430.20, part 2D of schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
906.42	*3,5-Dinitro-o-toluamide (provided for in item 411.93, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
906.45	*Dicyclohexylbenzothiazylsulfenamide (provided for in item 406.39, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
906.46	*1-(3-Sulfopropyl)pyridinium hydroxide (provided for in item 406.42, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
906.48	*2,4 Dichloro-5-sulfamoyl benzoic acid (provided for in item 406.56, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.01	Triphenyl phosphate (provided for in item 409.34, part 1C, schedule 4).	Free	No change	On or before [9/30/85] *12/31/90*
*	*	*	*	*

APPENDIX TO THE TARIFF SCHEDULES—Continued

Item	Articles	Rates of Duty		Effective Period
		1	2	
907.07	*4-Chloro-2,5-dimethoxyaniline (CAS No. 6358-64-1 (provided for in item 405.01, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.09	*2.2'-Oxamido bis-[ethyl 3-(3.5-di-teributyl-4-hydroxyphenyl) propionate] (provided for in item 405.34, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.10	Cyclic organic chemical products is any physical form having a benzenoid, quinoid, or modified benzenoid structure (however provided for in items 402.36 through 406.63, part 1B, schedule 4, *but excluding 6,7-dihydroxy-2-naphthalene sulfonic acid sodium salt provided for in item 403.57,*) to be used in the manufacture of photographic color couplers.	Free	No change	On or before [9/30/85] *12/31/90*
907.11	*Mixtures containing derivatives of N-[4-(2-hydroxy-3-phenoxypropoxy)phenyl] acetamide (provided for in item 407.19, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.12	Photographic color couplers (provided for in item 408.41, part 1C, schedule 4).	Free	No change	On or before [9/30/85] *12/31/90*
907.13	Mixtures containing not less than 90 percent by weight of stereoisomers of 2-isopropyl-5-methylcyclohexanol, but containing not more than 30 percent by weight of any one such stereoisomer (provided for in item 407.16, part 1B, schedule 4).	Free	No change	On or before [12/31/87] *12/31/90*
907.14	Mixtures of 3-ethylbiphenyl (m-ethylbiphenyl) and 4-ethylbiphenyl (p-ethylbiphenyl) (provided for in item 407.16, part 1B, schedule 4).	Free	No change	On or before [6/30/85] *12/31/90*
[907.85	1,1-Bis(4-chlorophenyl)-2,2,2-trichloroethanol (Dicofol) (provided for in item 408.28, part 1C, schedule 4) [1].	8.6% ad val.	7¢ per 1b. + 41% ad val.	On or before 9/30/85]
907.15	*1.1-Bis(4-chlorophenyl)-2,2,2, trichloroethanol (Dicofol) (provided for in item 408.28, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.17	Sulfapyridine (provided for in item 411.27, part 1C, schedule 4).	Free	Free	On or before [12/31/85] *12/31/90*
907.24	*1,2-Dimethyl 3,5-diphenylpyrazolium methyl sulfate (difenzoquat methyl sulfate) (provided for in item 408.19, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.26	*Dinocap (provided for in item 408.16, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.27	*Mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol) and application adjuvants (provided for in item 408.36, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.28	*Mixtures of Mancozeb and dinocap (provided for in item 408.38, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.29	*Dinocap (provided for in item 408.38, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.30	*Cross-linked polyvinylbenzyltri-methyl-ammonium chloride (cholestyramine resin USP) (provided for in item 412.70, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.39	*d-6-Methoxy-a-methyl-2-naphthaleneacetic acid and its sodium salt (provided for in item 412.22, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	*	*	*	*
907.43	*3,7-Bis(dimethylamino)-phenazathionium chloride (methylene blue) (provided for in item 409.74, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.44	*2,2-Bis(4-cyanatophenyl (provided for in item 405.76, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.46	*2-[(3-Nitrophenyl) sulfonyl] ethanol (CAS No. 41687-30-3) (provided for in item 406.00, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*

Item	Articles	Rates of Duty		Effective Period
		1	2	
907.47	*Aminoethylphenylprazole (Phenylmethylaminopyrazole) (provided for in item 406,36, part 1B schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.48	*1-(4-(1,1-Dimethylethyl) phenyl-4-(hydroxydiphenylmethyl-1-piperidinyl)-1-butanone (provided for in item 405.42, part 1B, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.49	*Butyl 2-[4-(5-trifluoromethyl-2-pryidinyloxy)-phenoxy] propanoate (as provided for in item 405.23, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	* * * *	*	*	*
907.52	*Benzethonium chloride (provided for in item 408.32, part 1C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.53	*3-amino-3-methyl-1-butyne (provided for in item 425.52, part 2D, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.54	*Malononitrile (provided for in item 425.42, part 2D, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.55	*Secondary butyl chloride (provided for in item 429.47, part 2D, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.57	*Paraldehyde (provided for in item 439.50, part 3C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.60	*Maneb, zineb, mancozeb and metiram (provided for in item 432.15, part 2E, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.61	*Metaldehyde (provided for in item 427.58, part 2D, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
907.63	**[**Nicotine resin complex (provided for in item 437.13, part 3B, schedule 4)**]** *Nicotine resin complex put up in measured doses in chewing gum form (provided for in item 438.02, part 3B, schedule 4).*	Free	No change	On or before 12/31/ **[**87**]** *90*
*	* * * *	*	*	*
907.72	*Absorbent chemical material of one or more cross-linked sodium polyacrylate polymers (provided for in item 430.20, part 2D, schedule 4).*	*Free*	*No change*	*On or before 10/31/87*
*	* * * *	*	*	*
907.78	*Cyclosporine (provided for in item 439.30, part 3C, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	* * * *	*	*	*
907.83	*Nonbenzenoid vinyl acetatevinyl chloride-ethylene terpolymer, containing by weight less than 50 percent derivates of vinyl acetate (provided for in item 445.48, part 4A, schedule 4).*	*Free*	*No change*	*On or before 12/31/90*
*	* * * *	*	*	*
909.35	*Glass inners designed for vacuum flasks or for other vacuum vessels (however provided for in items 545.31, 545.34, 545.35, and 545.37, part 3C, schedule 5)*[2].	*9% ad val*	*55% ad val*	*On or before 12/31/90*
*	* * * *	*	*	*
910.95	*Tungsten ore (provided for in item 601.54, part 1, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*
*	* * * *	*	*	*
911.25	Synthetic rutile (provided for in item 603.70, part 1, schedule 6).	Free	No change	On or before **[**6/30/87**]** *12/31/90*
*	* * * *	*	*	*
911.93	*Offset printing presses of the sheet-fed type weighing 3,500 pounds or more (provided for in item 668.21, part 4D, schedule 6).*	*Free*	*10% ad val*	*On or before 12/31/90*
*	* * * *	*	*	*

APPENDIX TO THE TARIFF SCHEDULES—Continued

Item	Articles	Rates of Duty		Effective Period
		1	2	
911.95	Entertainment broadcast band receivers valued not over $40 each (however provided for in schedule 6) incorporating timekeeping or time display devices, not in combination with any other article, and not designed for motor vehicle installation.	Free	No change	On or before [12/31/86] *12/31/90*
	* * * *	*	*	*
912.01	*Carding and spinning machines specially designed for wool, other than machines specially deisgned for the manufacture of combed wool (worsted) yarns (provided for in item 670.04, part 4E, schedule 6)*	*Free*	*No change*	*On or before 12/31/90*
	* * * *	*	*	*
912.03	*Bicycle tires and tubes and rim strips, of rubber or plastics (provided fore in items 732.42, 772.48 and 772.57, part 12C, schedule 7).*	*Free*	*No change*	*On or before 12/31/90*
	* * * *	*	*	*
912.05	Generator lighting sets for bicycles, and parts thereof (provided for in item 653.39, part 3F, schedule 6).	Free	No change	On or before [6/30/86] *12/31/90*
912.06	*Bicycle chains (provided for in items 652.13 and 652.15, part 3F, schedule 6).*	*Free*	*No change*	*On or before 12/31/90*
912.07	Machines designed for heat-set, stretch texturing of continuous man made fibers (provided for in item 670.06, part 4E, Schedule 6).	Free	No change	On or before [12/31/85] *12/31/90*
[912.08 [1]	Single cylinder fine gauge hosiery knitting machines and double cylinder jacquard hosiery knitting machines (provided for in items 670.16 and 670.18, part 4E, schedule 6).	Free	No change	On or before 9/30/85
[912.09 [1]	Double-headed latch needles (provided for in item 670.58, part 4E, schedule 6).	Free	No change	On or before 6/30/85
912.10	Caliper brakes, drum brakes *front and rear derailleurs, shift levers, cables and casings for derailleurs*, coaster brakes, two-speed hubs with internal gear-changing mechanisms, three-speed hubs incorporating coaster brakes, three-speed hubs not incorporating coaster brakes, click twist grips, trigger and twist grip controls for three-speed hubs, [multiple] free wheel sprockets, cotterless type crank sets, frame lugs, *and* parts of all the foregoing, including cable or inner wire for caliper brakes and casing therefor, whether or not cut to length[, and parts of bicycles consisting of sets of steel tubing cut to exact length and each set having the number of tubes needd for the assembly (with other parts) into the frame and fork of one bicycle] (provided for in items 732.35, 732.38, 732.41, and 732.42, part 5C, schedule 7).	Free	No Change	On or before [6/30/86] *12/31/90*
	* * * *	*	*	*
912.14	*Television picture tubes which would be included in assemblies provided for in item 684.96 but for headnote 4 to part 5, and not provided in item 912.16 or 912.19.*	*11% ad val*	*No change*	*On or before 10/31/87*
	* * * *	*	*	*
912.16	*Television picture tubes, color, having a video display diagonal of less than 12 inches (provided for in item 687.35, part 5, schedule 6).*	*Free*	*No Change*	*On or before 12/31/90*
	* * * *	*	*	*
912.18	*Parts of indirect process electrostaic copying machines, which machines reproduce the original image onto the copy material by electrosatic transference to and from an intermediate (provided for in item 676.56, part 4G, schedule 6).*	*Free*	*No Change*	*On or before 12/31/90*

APPENDIX TO THE TARIFF SCHEDULES—Continued

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
912.19	Television picture tubes, color having a video diagonal of 30 inches and over (provided for in item 687.35, part 5, schedule 6).	Free	No Change	On or before 9/30/88
912.20	Articles provided for in parts 5D and 5E of schedule 7 (except ballons, marbles, dice, and diecast vehicles), valued not over five cents per unit; and jewelry provide for in part 6A of schedule 7 (except parts), valued not over 1.6 cent per piece.	Free	No Change	On or before [12/31/86] 12/31/90
912.24	Extracorporeal shock wave lithotripters imported by nonprofit hospitals and research or educational institutions (provided for in item 709.15 or 709.17, part 2, schedule 7).	Free	No Change	On or before 12/31/86
912.28	Needles for knitting machines (provided for in items 670.58 and 670.62, part 4F, schedule 6).	Free	No Change	On or before 12/31/90
912.29	Hosiery knitting machines, single cylinder fine guage and all double cylinder (provided, for in items 670.16 and 670.18, part 4E, schedule 6).	Free	No Change	On or before 12/31/90
912.30	Stuffed dolls (with or without clothing) and doll skins for stuffed dolls (provided for respectively in items 737.23 and 737.36, part 5E, schedule 7).	Free	No Change	On or before [12/31/85] 12/31/90
912.32	Stuffed or filled toy figures of animate objects (excpet dolls) not having a spring mechanism and not exceeding 25 inches in either length, width, or height (provided for in item 737.30 or 737.40, part 5E schedule 7).	Free	No Change	On or before 12/31/90
912.34	Stuffed or filled toy figures of inanimate objects not having a spring mechanism (provided for in item 737.47, part 5E, schedule 7).	Free	No Change	On or before [12/31/85] 12/31/90
912.36	Skins for stuffed toy figures of animate and inanimate objects (provided for in item 737.51, part 5E, schedule 7).	Free	No Change	On or before [12/31/85] 12/31/90
912.45	Frames for hand-held umbrellas chiefly used for protection against rain (provided for in item 751.20, part 8E, schedule 7).	Free	No Change	On or before [12/31/86] 12/31/90

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Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
912.46	Jacquard cards (provided for in item 670.56, part 4E, schedule 6).	Free	No Change	On or before 12/31/90

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
915.10	Transparent plastic sheeting containing 30% or more of lead, by weight (provided for in item 774.55, part 12B, schedule 7).	Free	No Change	On or before 12/31/90
915.20	Personal effects of aliens who are participants in or officials of the Tenth Plan American Games, or who are accredited members of delegations thereto, or who are members of the immediate families of any of the foregoing persons, or who are their servants; equipment for use in connection with such games; and other related articles as prescribed in regulations issued by the Secretary of the Treasury.	Free	Free	On or before 12/31/90
905.30	Grouped filaments and yarns, not textured, in continuous form, colored, of nylon or modacrylic, whether or not curled, of not less than 20 denier per filament, to be used in the manufacture of wigs for dolls (provided for in item 309.32 and 309.33, part 1E, schedule 3, or item 389.62, part 7B, schedule 3).	Free	No Change	On or before 12/31/90

* * * * * * *

[1] Special: 6.9% ad val. (D). No change (A, E, I).
[2] Special: 3.6% ad val. (I); Free (A, E).

ADDITIONAL VIEWS

The bill reported here is the culmination of a tremendous effort by Members, representing a broad spectrum of interests and views, to achieve a meaningful piece of trade legislation. Several goals guided our progress. The first was to craft tough but fair legislation—legislation that tightened our trade laws but nevertheless worked to open rather than close markets and conformed to our international obligations. Second was a desire to consult with the Administration so that we could ultimately count on the President's signature. Finally, we hoped to set aside partisan rhetoric and design a bill that could gain broad bipartisan support.

In large measure we have realized our basic goals, although some problems remain to be resolved. Key to the past and continued success of this process is the fact that Republicans and Democrats worked together with the Administration, hammering out compromises and improving the effectiveness of each provision. The Committee also solicited the participation of numerous business and labor groups which identified problems and offered proposed solutions. Although difficulties remain, it seems clear that a good, comprehensive bill—one that can get the President's endorsement and become public law—finally is within our grasp.

There are many praiseworthy aspects of this bill, the first of which is the substantive grant of tariff and nontariff negotiating authority to the President and his designated negotiator, the U.S. Trade Representative. Tariff authority is delegated for a period of 6 years with nontariff authority for 3 years, renewable for an additional 2 years if warranted. The shorter duration of the nontariff authority is to keep up the pressure during the Uruguay Round of GATT talks. Previous experience has taught us that agreements are often not concluded until the imminent expiration of U.S. authority. In tariff negotiations, we also will attempt to equalize discrepancies.

The bill further provides for detailed negotiating objectives during the round, which would strengthen GATT's role in world trade and gain a fairer, more reciprocal environment for all trading partners. Specific mention is made of negotiating for more effective dispute settlement procedures; greater discipline over trade in agriculture; greater discipline for certain trade practices—such as downstream dumping, resource subsidies, export targeting, and sales displaced via third country markets—plus coverage for services trade, intellectual property and foreign direct investment.

Not only does this measure specify that the Uruguay Round cover the new realities of world trade, it strengthens section 301 in order to address the more innovative and disruptive forms of unfair trade practices. In reworking this law, our goal was to require USTR to investigate and take swift and sure action against such practices according to specific criteria, within realistic time frames. USTR is given enhanced authority to carry out more effectively its lead role in trade policy development as well as to better consult with Congress and the private sector on trade policy and negotiations. Also, the countervailing duty and antidumping laws have been given more muscle, particularly in dealing with countries that may make slight product alterations or shipping via third countries to avoid dumping or countervailing duty action.

In section 201 we authorize USTR, rather than the President to determine whether an industry has been seriously injured by increasing imports and is therefore entitled to relief. We also approved a fast-track procedure for perishable agriculture products. We have made the standards fairer, including consideration of recessionary or seasonal cycles in the industry. On the adjustment side, we have instituted a process whereby companies are encouraged to develop plans for retooling so they are ready to face foreign competition in the future.

We have strengthened the powers of the trade remedy assistance office in the International Trade Commission (ITC), establishing it as a separate entity within ITC to increase its effectiveness, particularly its legal assistance and advice to small businesses which seek relief under sections 201 or 301 of the trade laws. We also have encouraged the private sector to come forward on a pro bono basis and provide legal representation to these same small businesses which might not otherwise be able to afford such services.

Despite our progress thus far, we should not lose sight of improvements that still could be made in the bill. We hope that the legislation can be improved before it is sent to the President. Then, the Congress and the Administration can join in a united policy front against unfair trade practices, with a strong commitment to effective trade laws and a fair and competitive world trading system, yet in full support of open and free markets.

Some of the provisions that need further revision or deletion in the view of the Administration include: those that establish unwarranted sector-specific schemes; required exchange rate negotiations that may signal harmful marked reactions; the definition of certain worker rights and labor practices as "unreasonable"; the scope of export targeting and diversionary input dumping; mandatory retaliation under certain trade laws and other provisions that may undermine satisfactory resolution of disputes; trade adjustment assistance provisions that go beyond reasonable budget restraints; private right of action under our antidumping laws that may violate GATT agreements; and unresolved problems related to the pricing and subsidization of imports from non-market economies.

Finally, there is perhaps the most divisive issue associated with the development of this bill. That is the Gephardt amendment on "unreasonable surplus countries" that leads to retaliation against countries with large bilateral surpluses with the U.S. The underlying premise of this amendment is seriously flawed. It attempts to associate an arbitrary 10 percent of each country's trade surplus with equivalent unfair trade practices, whether or not such practices themselves impact on the surpluses.

It should be clear that major reasons for existing trade surpluses are our own budget deficit and other macroeconomic forces. We ourselves have had significant bilateral surpluses in the past, and can expect them again as the dollar declines. The dollar-for-dollar tie between certain trade practices and surpluses, along with unrealistic surplus reduction goals, places us in a downward spiral of confrontation and retaliation. The bill, if this amendment is included, would most certainly draw a veto from the President.

Although our positions may vary on the parts of the bill that the Administration opposes, or we may advocate different approaches to resolving outstanding problems, we feel that agreement between Congress and the Administration on these various issues is achievable. Also, other Committees have reported provisions in this Committee's jurisdiction that may threaten the compromises thus far achieved. We feel confident that if we maintain the cooperative procedure, support the compromises that have been reached and confront head-on the remaining problems, Congress will have produced a trade bill that can be rightly praised and that will indeed reinforce a strong and fair trade environment and enhance competitiveness.

H.R. 3 as amended and reported from the Ways and Means Committee deserves the support of the House. We urge our colleagues to recognize the tough compromises that have been made throughout this process and the cooperative spirit that made a realistic bill possible. We also urge you to consider that inclusion of the Gephardt amendment would seriously threaten enactment of this needed legislation.

We urge our colleagues to oppose the Gephardt amendment and support passage of the reported version of H.R. 3.

John J. Duncan.
Bill Archer.
Guy Vander Jagt.
Bill Frenzel.
Dick Schulze.
Bill Gradison.
William Thomas.
Raymond McGrath.
Rod Chandler.

ADDITIONAL VIEWS OF REPRESENTATIVE RICHARD A. GEPHART

I know that all the members of this committee share my concern about the enormous trade crisis we are facing. The effects of the trade deficit and its underlying causes have enormous implications for our economy and our people. We can't live with trade deficits of $170 billlion or accept our status as the world's largest debtor nation. The devastating effects of our lack of competitiveness in every sector of our economy—from agriculture to high-tech to our basic industries—are only beginning to be felt. More than 1.2 million workers have already lost their jobs—something must be done.

Chairman Rostenkowski, Chairman Gibbons and the members of the committee are to be applauded for the work that they have done in putting together a well-reasoned, bi-partisan bill that addresses many of the problems in U.S. trade law.

Unfortunately, when it comes to action against foreign protectionist countries, the Ways and Means Committee bill does not include a result-oriented proposal that I feel must be in the bill. The size of our trade deficit and its impact on our economy demand that strong action be taken. The pervasive nature of trade barriers in other countries must be addressed—and quickly. For too long we have seen optimistic press releases issued as to how foreign markets will be opened to our products only to find another level of barriers in our way.

We would never accept an arms control agreement with the Soviets without stringent verification procedures. I won't accept less when our economic security is at stake. Our trading partners must know that we are serious.

I'm the first to acknowledge that unfair trading practices are only part of the problem. But they are an important problem. In considering the impact of foreign market barriers, we must look not only at the volume of trade losses, but also at the sectors they affect. The greatest foreign barriers come in three sectors that must play the key role in America's future: agriculture, services, and high technology. The sacrifice of American farmers and high-tech entrepreneurs to a one-sided free trade philosophy is a threat to our national security, our future prosperity, and our self-image as a country.

We cannot ask the American people to take the tough steps necessary to become competitive if every time they try to get their foot in the door, the door is slammed shut. American entrepreneurs need to know that if they develop new technologies and make good products, their government will make sure there is a market for them overseas.

The Committee's bill does not include a proposal which I offered, and which was adopted by this Committee and the House of Representatives as Section 119 of H.R. 4800 last year. At the beginning of this session, H.R. 3, identical in all respects to last year's bill was introduced in the House with the support of more than 200 Members. My belief is that the Committee bill does not go far enough to address the serious market access problems faced by U.S. exporters because of its failure to include language similar to Section 119.

This language identifies foreign nations which have built up huge bilateral surpluses with the United States in part through a pattern of unfair and discriminatory trade practices. It calls on the Administration to negotiate in good faith with these nations to eliminate these practices which hinder our rightful export opportunities. In keeping with the provisions of the Ways and Means Committee bill, only if these negotiations are not successful will the President be asked to take action against the foreign trade barriers on a dollar-for-dollar basis under a proposed revision to Section 119. My proposal also includes a provision to ensure that these nations live up to their commitments or that our actions against them are effective in enhancing our commercial position.

Coupled with the other changes that this committee has made in the trade provisions of H.R. 3 and the measures being adopted by five other committees, I believe this language would have set a firm base for an effective, rational partnership between the Congress, the Administration, and the American people for the rest of this century and beyond. My hope is that stronger market access language will be adopted by the full House during its consideration of H.R. 3.

If we fail to act, we risk the continued loss of jobs, reduced industrial and agricultural capacities, a debased self-image, and a lower standard of living for ourselves and future generations. This is a legacy we must refuse to pass on to our children.

RICHARD A. GEPHARDT.

ADDITIONAL VIEWS OF RICHARD T. SCHULZE

While I strongly support the Committee bill overall, I am disappointed that the Committee failed to provide a trade law which specifically addresses the dumping of products from non-market economy, or communist, countries.

Our current antidumping statute is fraught with problems as it applies to communist countries. The term "non-market economy" has been used by the Committee in this record, however, countries that are non-market in their orientation are, for all intents and purposes, communist or socialist countries. The terminology invoked is largely irrelevant for the politics and economics remain the same.

Presently, the approach used to substantiate allegations of dumping from communist countries is based on surrogate country prices from a free market economy country at a similar level of economic development. This approach is inherently vague, extremely unpredictable and many times unfair to the petitioner for obvious reasons. It is never certain which country will be selected for fair value comparisons. Often times, the most appropriate surrogate country is unwilling to cooperate and supply to necessity data for fear that similar action will be taken against it in the future. Additionally, it is very burdensome to administer.

Over the years, the Committee has grappled with this issue, which has resulted in proposals to establish price benchmarks for the purpose of determining the fair value of products from communist countries. At one point, the Committee bill included such a provision, but it was wisely deleted.

Unfortunately, the price benchmark which was contained in the Committee bill was based on the lowest average import price of a free market economy. Such a low price standard would certainly have been unduly advantageous to communist countries, and, consequently, would have served only to the detriment of U.S. industries.

The lowest average free market import price is clearly unfair, and would end up granting a special trade advantage to communist countries for important reasons. First, and foremost, establishing such a low price standard for communist countries is founded on the false premise that these countries are as efficient as the most efficient market economy producers. Any textbook on introductory economics highlights the inherent inefficiencies of centralized economies.

Second, the special competitive edge which would be granted to communist countries under a lowest average price standard would be clearly unfair to many market economy countries because they would be unable to use the lowest import price benchmark. For example, if the lowest price imports were from Singapore, then all communist country producers would be able to sell widgets at that price in the United States. However, Mexico, to use an example close to home, would be required to sell widgets at fair value, that is, either its home market price or cost of production, whichever is higher. Clearly, Mexico would be at a disadvantage in competing with the communist country producer whenever its cost of production or home market price is higher than the Singaporean import price, as would every other market economy producer.

In addition, the unfair competitive edge that a lowest average price benchmark would grant to communist countries would act as a disincentive to adopting market-oriented reforms in these countries. Market reforms in communist countries are always adopted over vigorous institutional objection, and loss of the advantage of selling at the lowest average import price would be another reason to avoid change.

The bottom line is that, if we are going to establish a pricing benchmark to use in judging whether imports from communist countries are being sold for less than their fair value, we must carefully consider what that benchmark should be. The fact that U.S. industries directly competing with over 50% of the imports from communist countries are adamantly opposed to a price benchmark based on the lowest average free market import price underscores the major problems with such a standard.

For all of the reasons stated above, any price benchmark to be used in determining whether imports from communist countries are being dumped onto the U.S. market should be based on a more reasonable price benchmark than the lowest average free market price. Such a benchmark should include prices from both efficient and inefficient producers. This would more fairly respresent communist countries' costs of production. Any claims that this standard would stop trade with these countries are unfounded because injury would still have to be proved for any trade remedy to be imposed. At the same time, there would be more incentive for communist countries to adopt market economy reforms. I hope that the Senate and conference action will include such a provision in the final bill.

Although the Committee bill did not provide for a fair price benchmark pertaining to dumping by communist countries, it did make important and needed changes to Section 406 of the Trade Act of 1974. Section 406 was designed to provide a remedy against market disruption from communist countries. Since its inception, however, this law has never been implemented successfully. No relief has been provided in any of the ten cases that have been initiated, including three in which the International Trade Commission made affirmative findings. Consequently, it has become a law that is totally unused.

In the Committee bill, Section 406 is broadened and made into an effective, workable trade remedy. These changes were long overdue and seriously needed.

Many other provisions in the Committee bill deserve mention. Among those is one which will provide $1.0 million in loans and grants to educational institutions and firms providing new skills and training to dislocated workers. Financing for these loans and grants would come from reserve funds of the new defunct firm loan program under the trade adjustment assistance program. An example of how this provision would be beneficial would be a situation in which a university has designed a program to help a group of dislocated workers learn how to become computer literate. We should rightfully encourage such endeavors.

Last but not least, the Committee bill makes important strides in the formulation of our nation's overall trade policy. It substantially strengthens the role of the United States Trade Representative, as well as provides for close interaction between the Congress, the Executive Branch and representative elements of the private sector in the development and implementation of our trade policy objectives and priorities. Combined together, these provisions will enable us to set forth a unified and decisive trade policy as a number one national priority, which is absolutely essential to our continued world economic leadership.

DICK SCHULZE.

SEPARATE VIEWS BY MR. FRENZEL

As a supporter, with reservations, of the Ways and Means amendments to HR 3, I wish to applaud the effective leadership of Chairman Rostenkowski and Chairman Gibbons. In contrast to the HR 4800 experience of last year, the process this year was positive, and the spirit of cooperation was rewarding. As a Minority Member, I was included in the process and that my views were considered, even though I seek further changes throughout the remainder of this process, the Administration's counsel was also sought on a regular basis. Many modifications sought by the Administration and by Minority Members were in fact included in the co-chairmen's mark. These changes were difficult ones for both sides. In most cases, neither side was completely satisfied, yet all negotiating sessions with Members on both sides were productive. The two Chairmen deserve praise for the exceedingly difficult job of balancing the divergent interests of all 36 Committee Members, many of whom believed that their interests in HR 3 or in opposition to HR 3 should be preserved. My support of the bill was offered throughout the committee process not because I believed that the final committee product would be a perfect one, but because I believe that the process was constructive, and could lead to an acceptable, signable bill. As our bill is considered on the House floor and reconciled with the Senate version, I look forward to the same spirit of cooperation.

My general open trade philosophy has led me to believe that our trade remedy laws are sufficient. When they are aggressively administered, as has been the case since Ambassador Yeutter assumed office, they work well the spirit of compromise, however, I believe that many of the changes in this bill will provide improvements that will enable more US industries to use the trade remedy laws successfully rather than to run to the Congress for assistance. I also appreciate the efforts by our co-chairmen to keep industry-specific language out of the bill, other than those sections that were included last year.

Sections of the bill which I can generally support are the sections requiring Presidential action regarding trade deficit reduction, the 301 actions required should agreements negotiations fail, the reduced deadlines for 301 actions, the Office of Unfair Trade Investigations within USTR, most of the 201 changes, the Trade Adjustment Assistance changes that would promote worker retraining, the amendment to Section 406 of the Trade Act of 74 regarding market disruption by nonmarket economy imports, the amendments to the definitions of domestic industry and interested party under our countervailing and antidumping laws, the discretionary use of CVD laws against NMEs, the authorization for the ITC to disregard imports into geographically isolated markets during injury determinations, the study of Subsidies Code commitments, the study on market-oriented reforms in the PRC with possible future changes in the application of our antidumping laws against that country, the intellectual property rights section, the trade negotiating objectives and authority section, the section which strengthens the role of the USTR in the trade policy arena, the section which expands consultation requirements between the USTR and Congress as well as the private sector advisory committee functions, the reduction of time limits for national security consideration under Sec. 232, the reallocation of waiver pool GSP benefits to qualifying debtor countries, strengthening the ITC's trade remedy assistance office and all of the language that relates to agriculture.

My support of the above provisions, as well as some of those sections which I have not mentioned in this statement, may not always be considered enthusiastic, but more accurately should be described as accepted in the spirit of compromise. In many of these areas, I would have preferred to avoid changes, or to strike certain sections. However, realizing that mine was a minority position, I did reluctantly accept those changes.

Despite the overall positive nature of the trade bill, there are sections of the bill which require further modification, and which I do not support in their current form.

First, the transfer of authority issue is a major concern to the Administration. The Administration opposed an amendment which would have transferred the authority to retaliate under section 301 from the President to the USTR. While that amendment did not pass, it may be offered as a floor amendment. The transfer of authority incorporated into the bill under 201 is also a problem for me.

In both of these cases, in my opinion, only the President is in a position to weigh all of the factors that must go into making these decisions, some of which could violate trade agreements. Only the President should be made accountable for decisions that have this kind of international repercussion. In my judgment, the USTR has much more flexibility and more negotiating clout, if he retains the negotiating authority but does not have to make the final decision with respect to retaliation.

The worker rights section was improved in the co-chairmen's mark. However, there should be further attempts to ensure that we will not be forcing our own labor standards on developing countries which cannot meet those standards.

The targeting section has also been improved, but it still could provoke retaliation and mirror legislation which could affect some of our own industries. Targeting is far more appropriately handled as a negotiating objective, which we have included in the bill.

The Gephardt provision remains a primary concern of many members, including myself. Even though I believe that Mr. Gephardt's concerns can be dealt with effectively under our normal 301 laws, I realize that the political situation dictates there must be a Gephardt provision in the bill. I would hope that further compromise might include language that would make the retaliation sections of the Gephardt proposal correspond to those of the 301 changes in the bill reported. The Administration is also concerned that the section of the Gephardt language that calls for currency alignment negotiations is not within the jurisdiction of our Committee.

The TAA section should continue to be reviewed for possible modification, particularly the high cost, and the need to coordinate this program with the additional proposed funding of JTPA. However, I congratulate Mr. Pease for his great work in responding to the needs of workers in this section and elsewhere throughout the bill.

The natural resources provision remains a major concern of mine in the bill. While a number of significant improvements have been made, I remain concerned that the determination of preferential rates section still over-emphasizes the consideration of benchmark prices that would deny a country's comparative advantage in an input. I would also prefer that Commerce have the authority to consider all of the benchmarks at its discretion rather than to have them ranked in importance by the Committee.

Even though the language has been improved, the section continues to face opposition abroad. It is quite possible that the provision will prompt retaliation or the passage of mirror legislation by other nations, which may not be so charitable in drafting their versions of this legislation. The U.S. has many of its own input subsidies that would prompt continuing duty investigations.

Diversionary dumping is still GATT inconsistent and could provoke mirror legislation which would injure our industries, which have the largest incidence of dumping in the world. Dumping or pricing strategies are legal within a country's boundaries, including our own. It is not always possible to adjust the price of an import that is bound for the U.S. We should look for additional solutions to the problem of real diversion while restricting any effects the language may have on other imports. In my judgment, the best way to handle this problem is to include diversionary dumping as a negotiating objective, as we have done.

The Guarini amendment providing a private right of action for dumping damages is also an area that will be the subject of negotiations at the MTN and should not be considered in this bill. The changes in this provision in the co-chairmen's mark were positive, but the changes made in the 1916 Antidumping Act still would be a GATT violation and subject us to possible retaliation and mirror legislation. I hope that further changes can be obtained to this section as well.

The Scofflaw provision has been greatly improved, however, I still am concerned that some importers who have made inadvertent errors could be caught under the current language. Customs law violations already require very hard penalties. In cases of fraud, penalty is the forfeiture value of the goods. Penalties for a criminal penalty range up to $500,000 for a corporation and $250,000 for an individual and/or imprisonment. Even where mitigation occurs, the penalties remain a deterrent. In my opinion, it would be worthwhile pursuing remedies to violations other than import exclusion.

While I understand the intent of the steel circumvention section, I am concerned that the provision could have a very harmful effect on some of our close allies. Hopefully, we can improve this language as well.

The telecommunications section is another of my major concerns in the bill. This section was not touched by the Committee due to a compromise that had been reached between those parties who supported the provision last year. Unfortunately, that compromise did not include those who opposed the bill. While the telecommunications section fit in with the other provisions in HR 4800, many of which were equally objectionable, it does not conform to the spirit of compromise of the committee bill. In my opinion, it sticks out sorely as unfinished business. Its mandatory retaliation sections ought to be moderated to conform to what we have done to 301 in the bill.

As mentioned above, were I not in a compromise mode, I would include many other criticisms of the bill in this statement. However, those mentioned above, while significantly improved, still call for further negotiation and consideration of changes. I look forward to further cooperation on this bill throughout the remainder of the process. I expect to continue my support of this bill as long as the Committee spirit continues.

BILL FRENZEL.

DISSENTING VIEWS OF HON. PHILIP CRANE

After much turmoil and further brandishment of well-worn phrases like "unfair surplus", "inflated dollar", "level playing field", "free but fair trade" and "competitiveness", the Ways and Means Committee has once again reported an omnibus trade bill. This year we have set aside some of the most strident partisan rhetoric and have attempted to work in a more bipartisan way, but we have failed to achieve worthwhile legislation that will either improve American competitiveness or expand foreign markets for American exports. I must oppose HR 3 in the strongest possible terms.

Because we have worked so hard on this bill, both Democrats and Republicans as well as the Administration, we should not inflate the result and rush to embrace a flawed product. I believe the President cannot, in good conscience, or for the good of our country, sign this bill. Merely because we desire a "tough" trade bill so strongly, we should not fool ourselves into believing that this bill will have any significant effect on our trade deficit. Tougher political decisions and tough action to reduce the budget deficit are needed if we are to improve our country's trade position. Neither will this bill magically enhance the competitiveness of U.S. firms and workers, especially without needed changes in our tax laws that give real meaning to the word "competitiveness".

Indeed, HR 3 represents a real threat to a free and open market trade policy—with the least amount of government interference, either here or abroad. The bill promises more than it can deliver with respect to the macroeconomic factors of our economy. It holds out the promise that we will begin to close our market if our trading partners don't do things our way or if our trade deficit is not improved through concessions from our foreign competitors. Also the bill has many sector-specific special interest provisions—such as for steel, coal, telecommunications—or provisions that have the expectation of giving special priority to certain sectors of our economy. This only hurts our long-term trading interests.

U.S. Trade Representative Clayton Yeutter eloquently expressed his major concerns in a letter to Chairmen Rostenkowski and Gibbons on March 18, 1987. In this correspondence, Ambassador Yeutter cited five factors that should serve as a litmus test to judge whether the proposed legislation will enhance the U.S. trade posture or not. Failing any one of the five would make for bad policy in his view. The five are:

Does the proposal enhance American competitiveness?

Does it confer sufficient negotiating leverage and the flexibility to use such leverage with our trading partners at the Uruguay Round and beyond?

Does it conform to our international obligations?

Is it likely to provide retaliation against U.S. exports?

Would enactment of mirror legislation abroad be harmful to U.S. exports?

I fear that provisions in this bill fail one or more of these tests. Ambassador Yeutter goes on to say in his letter than unless the onerous provisions are eliminated or significantly altered, he would not recommend the bill to the President. Clearly the President will not sign such a bill. This bill will not turn around our trade deficit or make our firms more competitive. At best, it offers marginal improvements in the administration of our trade laws. At worst the bill attempts to punish key trading partners, whines about tough competition we face both here and abroad, threatens to disrupt our economy and close world markets, and gives special benefits to sectors of our economy that have clout in Congress. We can ill afford to send political signals at the expense of our broader economic and foreign policy interests.

These objectionable provisions are not just paper tigers; if they remain in the bill they can have real teeth that will bite us in the end. For example, the famed Gephardt Amendment seems to have become the focal point for the protectionist forces. This provision attempts to tie our trade deficit primarily to unfair foreign trade practices even though the legitimate causes are a runaway budget deficit, a low savings rate, continued high consumer demand and a tax system that discourages investment and undermines competitiveness. As modified by the Committee, the Gephardt provision may represent a vast improvement over last year's version, but it is still objectionable in seeking to balance bilateral trade through strict formula and subsequent short-term negotiations rather than remedy the root macroeconomic causes of the imbalance. But as misguided as this version is, the new Gephardt proposal, rumored to make its entrance as a floor amendment is even worse, with its requirement for surplus reduction agreements between the U.S. and certain trading partners within 6 months and failing that retalization on a dollar-for-dollar basis.

The bill also incorporates denial of worker rights as actionable under the definition of an "unreasonable" act, policy, or practice. The specific worker rights that must be provided to except the label "unfair trade practice" are; the right of association; the right to organize and bargain collectively; intolerance of any form of forced or compulsory labor; the requirement to specify a minimum age for child labor; and taking into account the country's level of economic development, the requirement to provide minimum wages, hours or work, and occupational safety and health.

Our Trade Representative currently encourages worker rights under the auspices of the Generalized System of Preferences (GSP), granting GSP benefits to those countries that show progress in this area and denying such benefits to those that do not. It is laudatory to promote worker rights as a human rights issue and to award special benefits to progressive countries. But to set up worker rights as the benchmark of a fair trade policy, when there is no international agreement and when the U.S. may not meet all of its own guidelines, is the height of arrogance and an incursion into the sovereignty of other nations. The specificity of this langauge ties our negotiator's hands an makes action mandatory unless the country emulates our own system. These provisions attempt to define developing countries in our own terms and, if countries do not comply, to declare them abusers of their workers. We want to declare "lower wages" or "no unions" as unfair trade, and remove a natural comparative advantage of our developing trading partners.

Another objectionable provision is export targeting, which is defined as "unreasonable" by virtue of it being a government scheme to capture a market. All competitive marketeers have strategies to corner markets or increase market share, and I trust our top-notch U.S. exporters are aggressively seeking legitimate ways to better their market position. Many exporting firms have benefited from government spending for military, R&D, natural resources or farm support. Yet this provision could boomerang on our export efforts when either retalization or mirror legislation occurs. Our trading partners could interpret our export marketing efforts that have benefited from government spending as forms of "targeting" and slap duties on our goods.

The bill contains as well a problematic clause on currency manipulation. This requires Treasury to determine whether a country is maintaining an artificially low exchange rate, out of keeping with that country's strength in world markets. If so, Treasury would be required to negotiate a more realistic rate with the country in question, and failing that, to levy a tariff or quota or suspend trade agreements in retaliation and to equalize the rate.

Codifying this action into law is unnecessary as Treasury already very ably engages in exchange rate negotiation, both with our chief trading partners and with developing nations. From experience, Treasury considers such negotiations delicate and best conducted confidentially rather than on center stage. This provision could have the net effect of rendering such activities impotent.

If the bill were not bad enough, it also includes the hair-raising spector of quota auctioning in the context of import relief. While many may jump on the quota auction bandwagon as a fundraiser to offset our budget deficit, they neglect to consider the bureaucratic nightmare it will create, the uncertainty for retailers and consumers, and the costly maze of licenses, certificates, quota rights, etc. Countries which tried quota auctions found them monstrous to administer with inconsistent results and have discarded them for tariffs instead. I cannot fathom why we would venture into the quicksand of quota auctioning when our proven course lies in tariffs. We are blinded by the promise of jackpot dollars, and have not given enough attention to the underworld of bureaucracy, repression of competitive forces and hidden costs.

Import quota auctioning is also cited as a possible revenue raiser to underwrite trade adjustment assistance. In addition, it is proposed to elicit GATT approval to impose import fees to cover TAA expenses in the future. All this in addition to general revenues earmarked for TAA. Soliciting the right to impose import fees raises the prospect of mirror legislation from other countries to support their various causes. Such possible fees imposed on our exports undermines our competitiveness. It is rather ironic that we want to support assistance to workers impacted by imports by making our exports less viable. The worthy goal of retraining our displaced workers—whatever the reasons—could better be served by providing the incentives to industry for this purpose.

A further serious problem is the transfer of authority from the President to USTR in almost all our trade laws. Surely this is short-sighted and lowers the stature of our trade laws and the negotiating function that now lie directly under the guidance of the President. Although current incumbents have acquitted themselves most actively and aggressively, removing the President indicates he need not be involved or concerned. This can hardly be the case when trade overlaps into foreign policy, national security, defense, and foreign economic considerations, not to mention overall domestic economic and political considerations.

I believe the above-cited provisions harm rather than enhance our trade position, our competitiveness and the world trading system. If enacted this bill will negatively impact our U.S. exports and overall economy. First, the trade agreement violations entailed will result in retaliation against U.S. exports, putting more U.S. jobs in jeopardy. Consumer prices will rise as import duties are applied to realize broader import relief or raise TAA revenue. Finally, many critics of GATT have claimed that GATT is antiquated and weak, and we have countered that we will strengthen GATT's authority and coverage in the Uruguay Round. What will our credibility be if we pass this bill which includes all these violations of GATT agreements?

Although the bill has travelled far from its antecedent of last year—HR 4800—it is still a child of the protectionists. We cannot disguise our own economic problems as trade problems and blame our trading partners for the necessary restructuring of our economy. Unfair trade practices must be eliminated and world markets must be opened, but this bill paints the U.S. as victimized at home and in international markets. Such a picture is not supported by the facts. Our economy is strong and getting stronger as it adjusts to changing economic conditions. We need to make hard decisions on the budget and tax laws to keep our economy on the right track.

We must not let proposed solutions to trade problems drag our economy down as we did prior to the Great Depression. If we are feeling complacent about the consequences of a misdirected get-tough trade posture and think there will be no serious consequences if trade disputes arise, we need only to look at how the financial markets responded to the narrow U.S.-Japan argument on semiconductors. On the one hand it demonstrates that the U.S. can take, under existing law, tough but targeted responses to violations of trade agreements. It also demonstrates that there is often a price to pay. The lesson to be learned is that we need to be sure of the merits of action and measured in our response.

HR 3 demands that the U.S. take action, send messages and teach lessons as if we were shooting a load of shotgun pellets. Past history has taught us that we are likely to get bloodied by such an approach to trade policy in a global and increasingly competitive market. A free trade policy has served us well and has built for us the strongest economy and society in the world. We need not abandon this policy for the false and temporary protectionism of HR 3 because we are facing the trials of adjustment and the challenge of an improved trading system for all.

PHILIP M. CRANE.

DISSENTING VIEWS OF HON. HAL DAUB, APRIL 6, 1987

The Chairman, Mr. Rostenkowski, has done a remarkable job at forging a consensus on this bill. Barring a veto, Chairman Rostenkowski will have succeeded in overhauling both the tax and the trade codes. Two extraordinary feats. He is proving to be the most productive Ways and Means Chairman of modern times.

I was one of the first Republicans to support the Chairman on tax reform. I do not take lightly my vote against this trade reform proposal in the Committee.

My primary concerns with it are changes that mandate retaliation or, in the case of section 201, make import restrictions on fairly traded imports (i.e. goods not subsidized or dumped) more readily available.

These provisions could poison an already sick farm export patient. After a 40 percent drop in farm exports, the last thing needed is laws mandating retaliation that could give further incentive to our trading partners to slash their purchases of U.S. crops.

We must keep in mind that when the boom is lowered on imports without adequate deliberation and thought, farm sales are the first to suffer. They get hit in the initial round because the world is awash in competitively priced substitutes.

For example, in 1983, the Chinese cancelled $500 million in U.S. wheat imports after we stopped $50 million of their textile exports. Further, many in the trade community believe that the Canadian action against our corn shipments was a response to our tax on their shakes and shingles exports.

The next point, well substantiated at the Committee's hearings on the bill, is that foreign unfair trade practices are probably only responsible for about 15 percent of the trade imbalance. The federal budget deficit, which forces the U.S. to absorb large amounts of foreign capital, has created about 70 percent of the trade problem we face.

This, of course, does not mean we should ignore trade cheats. I agree with the Committee's general view that we need tough trade laws that bite. However, we do not need trade laws which automatically force action that violates the international trade rules which have contributed so much in the past to the health of our farm sector.

Trade policy by formula, I submit, is really a weak, dangerous substitute for the difficult, delicate balancing among competing interests that must be done to best guard the well-being of all sectors of our economy, as we work for strong positions in the world marketplace.

The President, the only person I believe who adequately represents all of our interests, recently moved to retaliate against the Japanese for violations of the Semi-conductor Agreement. Our domestic chip industry is in trouble and we are justifed in taking action to force the Japanese to quit predatory pricing practices and uphold the agreement they signed with us. Presumably, the President reached this decision after an assessment of the probable consequences for all sectors of our economy. Would we have felt more comfortable if the $5.1 billion in products sold to Japan by the American farmer were not factored into the decision-making process? I think not.

Yet under HR 3, farm sales would not have been brought to bear in any significant way on the outcome. Instead we would have experienced what I view as trade policy on automatic pilot. The amendments to Section 201 and Section 301 contained in this bill set the stage for allowing those who will pay the price for retaliation to be ignored, when the decision to retaliate is made.

Furthermore, the markets at which portions of this bill are aimed are some of the best purchasers of U.S. agriculture exports. For Japan, Korea and Taiwan, fully 22 percent of our exports are farm related. For the EC it is 13 percent. Together, out of total exports of $84 billion to these targeted countries, $14 billion or about 17 percent are farm related.

To take a closer look at the bill, section 301(a) is entitled "Mandatory Negotiations and Actions Regarding Foreign Countries Having Excessive and Unwarranted Trade Surpluses with the United States". The provision is as bizarre as the title. While it is a slight improvement over the mechanism contained in last year's trade bill, it still requires sweeping across-the-board barriers against our top farm customers in the event of negotiation deadlock.

There is almost no discretion to forego retaliation in the case of unjustifiable actions even if there are clear indications of a significant disruption in agricultural or other major exports. Retaliation can only be waived where it will do *substantial* harm to the national economic interest.

Even if most of the $14 billion in farm sales to the targeted countries was threatened, the waiver may not be effective. It isn't certain that the loss of $14 billion of farm exports in a $4.2 trillion economy could be considered substantial. The fact it might even be a close call ought to send shivers down the backs of those interested in overseas farm markets. Proponents of this bill, however, claim that it carries no added risks for major export reductions.

In light of this I worked with a number of farm groups and developed amendments to ensure that the interests of agriculture and other major exporters are preserved—to put the constant assurances of the bill's proponents into the legislation. I assumed that that at least some of my amendments would be acceptance because, if the bill carries no risks for major exporters like agriculture, then language effective only when such risks arise would be agreeable.

The amendments were, however, defeated, and with their rejection my suspicions over what this bill holds for exporters like the American farmer have grown.

The announcement of retaliation against the Japanese sent the Dow plunging a near record amount, illustrating what an unwieldly weapon import restraints are. I believe the "mandatory surplus reduction" section (301 a) could easily go off like a string of firecrackers in an ammo dump, setting in motion multiple retaliatory actions against at least three major trading partners all at the same time. The President would be powerless to effectively waive the actions even in the face of substantial export damage.

Another one of the my amendments, also supported by a number of farm groups, merely said that actions taken under section 301 (a) must be consistent with our international obligations. This too was rejected. So much for suggestions that this provision might be GATT legal.

The proposed changes to section 201 are also potentially damaging to overseas farm sales. Section 201 mandates increased import protection from goods that are fairly traded—i.e. those that are not subsidized or dumped and it almost always has a price tag. In response, trading partners are likely to retaliate by cutting American farm purchases or demand legally sanctioned compensation.

Section 201 relief will increase under the change because barriers will go up unless their economic cost (from foreign retaliation or from higher domestic prices) outweighs the economic and social benefits of providing relief. This unusually ambiguous language has been described as a harmless revision. The only relevant question is whether section 201 relief will or won't increase with it. If relief won't increase, why the change?

My suspicious, shared by a number of major farm groups, is that barriers will increase and be paid for directly in reduced exports. Nevertheless, efforts to revise the change closer to the current waiver were rejected.

Section 301 is the only trade law designed to open markets. The bill requires mandatory retaliation under it. It could be changed from a negotiation to a retaliation statute. An amendment I offered to ensure again that agriculture and other major export interests aren't sacrified for mandatory retaliation was also rejected.

There are positive and needed changes in this trade bill for agriculture and other industries. Foremost among these is the grant of negotiating authority for the GATT Round which is urgently needed by agriculture. By all measures, world trade in farm products is in a state of crisis, largely as a result of highly subsidized exports, principally by the European Community coupled with protected foreign markets. The Koreans for example ban beef shipments completely and the EC is threatening to prohibit them under the guise of scientific restrictions. U.S. exports of soybean products could be cut by a third if the EC goes through with proposed tariffs on fats and oils.

In this climate agriculture will be the centerpiece of the New Round with firm concessions on the part of our trading partners a prerequisite for overall success. The chaos we all see must be addressed for effective and enforceable multilateral rules.

Unfortunately we cannot expect to win by sitting at the GATT negotiating table arguing for fairer rules while violating the current ones as HR 3 would do. The dangerous and bizarre provisions described above must be rehabilitated as this bill moves forward. I urge my colleagues to examine carefully the very real prospects that this bill holds for damaging big exporters like farmers, and join me in voting no.

Hal Daub.

ADDITIONAL SUPPLEMENTAL VIEWS BY MR. FRENZEL AND MR. DAUB

H.R. 3 makes major changes to the basic definition of "subsidy" in the countervailing duty law which are dangerous to the flow of U.S. exports and conflict with the standards of the international trading system.

The bill's language on specificity tells the Commerce Department to look beyond the theoretical availability of a government program to be certain that, in practice, the program is in fact widely available and used. The report appears to create inconsistent interpretations of the relatively clear legislative language.

The examples given do not provide useful guidance for future cases, and go beyond the agreed international standards on countervailable programs.

The bill also changes the treatment of government goods and services by redefining "preferential rates." The bill requires that all government services and goods be provided on terms consistent with "commercial considerations" if they are to avoid countervailing duties. The current countervailing duty law requires that governments not discriminate among recipients of government services and goods in order to avoid subsidy findings. That is a more administrable and safer policy.

Section 153 would strongly encourage use of external prices as benchmarks for whether government goods and services are subsidies. This is unworkable, and it is also unfair. Many goods and services have no world market prices, and individual countries' prices will vary widely depending on differences in such factors as costs, supplies, quality, and demand. Even where world market prices do exist, they are often subject to government manipulation (e.g., OPEC oil prices) and can be highly arbitrary. Because of the enormous differences between countries, another country's price for a good or service should not stand as a valid benchmark.

Use of external price benchmarks deprives countries of their natural comparative advantages. That is contrary to our own foreign policy.

Even if the Department of Commerce is authorized to make "adjustments" to these external prices, the complexity of adjustments, and the short time frame, virtually ensures the final "benchmark" will be arbitrary. The lack of predictability inherent in these tests will create uncertainty in the marketplace.

The report states that government programs "which are clearly in the public welfare and benefit the society as a whole" are not intended to be countervailable. These programs are labeled "general benefits," to distinguish them from "generally available" benefits. However, the examples of "general benefit" programs cited by the report confuse legislative language more than they clarify it. The "society benefit standard" does not provide a useful definition for a general benefit, nor does it provide guidance on how to identify one.

The report also states another test in determining CVD programs: "a sufficient degree of competitive advantage in international commerce being bestowed on a discrete class of beneficiaries that would not exist but for government action." Under this second standard, a government program that exists in one country but not in all others could be vulnerable to countervailing duties. Many accepted government programs both in the U.S. and abroad would become vulnerable to countervailing duties, and the U.S. could well be viewed as creating trade barriers in violation of the GATT.

The report states that a government "restricting access" to its natural gas provides a countervailable benefit to the industries consuming it. The implication is that any government benefit actually provided to less than the entire universe of potential users cannot be generally available. This standard would make vast numbers of government programs countervailable.

In the past, the U.S. was virtually the only country to use countervailing duty law. This is no longer the case. The U.S. countervailing duty law has been used by other countries to develop their own subsidy laws. If other nations apply the sme arbitrary standards in this legislation to U.S. exports, American companies and workers will find that government programs of crucial importance to them will also make them liable for large countervailing duties. Mirror legislation in other countries will hurt the U.S. It will also alienate our trading partners and undercut the process of strengthening international discipline on trade subsidies that the United States has made a high priority for this round of GATT talks.

In summary, the Natural Resources section of H.R. 3 has been improved somewhat from the original version, but it needs further improvement so that it will not harm U.S. interests more than it helps.

Bill Frenzel.
Hal Daub.

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